TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 644

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

CEMENT INVESTORS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 23, 1941
CERTIORARI GRANTED MARCH 9, 1942

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Pleas and Proceedings in the United States Circuit Court of Appeals

Pleas and Proceedings Before the United States Board of Tax Appeals

Further Proceedings in United States Circuit Court of Appeals

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT.

No. 2270.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

vs.

CEMENT INVESTORS, INC., RESPONDENT.

[Petitioner's designation of record.]

Robert B. Cartwright, Clerk
United States Circuit Court of Appeals
For the Tenth Circuit
Denver, Colorado

Sir:

With further reference to our telegram of February 17, 1941, you are now advised that in the case of Commissioner v. Cement Investors, Inc., B. T. A. Docket No. 97219, there shall be printed the entire transcript of record as filed and as transmitted to you from the Clerk of the United States Board of Tax Appeals by letter dated February 14, 1941. The record to be printed shall include all of the matter contained in the docket entries as set forth in the list attached to the letter from the Clerk of the Board of Tax Appeals of February 14, including stipulation of facts, statement of points filed by petitioner, and all matters referred to both by the praecipe filed by the Commissioner of Internal Revenue and the praecipe filed by the taxpayer, also the agreed designation of additional portions of record to be contained in record filed by the taxpayer.

Respectfully,

SAMUEL O. CLARK, JR.,
Samuel O. Clark, Jr.,
Assistant Attorney General.

Filed February 27, 1941, Robert E. Cartwright, Clerk.

UNITED STATES BOARD OF TAX APPEALS.

CEMENT INVESTORS, INC., PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket No. 97219.

Appearances—For Taxpayer: James B. Grant, Esq., Stephen H. Hart, Esq. For Comm's.: Angus R. Shannon, Jr. Esq., Carroll Walker, Esq.

Docket Entries:

1939

Feb. 24—Petition received and filed. Taxpayer notified. (Fee paid).

Feb. 24—Copy of petition served on General Counsel.

Apr. 18—Answer filed by General Counsel.

Apr. 18—Request for Circuit hearing in Denver, Colorado filed by General Counsel.

Apr. 26—Notice issued placing proceeding on Denver, Colorado, calendar. Answer and request served.

Jul. 28—Hearing set for Sept. 18, 1939, in Denver, Colorado,

Sept. 21—Hearing had before Miss Harron on merits. Motion granted to file the amended petition. Copy served. Stipulation as to facts filed. Petitioner's brief due Nov. 6, 1939. Respondent due December 6, 1939—Petitioner's reply Dec. 21, 1939.

Oct. 10—Transcript of hearing of Sept. 21, 1939, filed.

Oct. 25—Answer to amended petition filed.

Oct. 31—Copy of answer to amended petition served on taxpayer.

Nov. 6—Brief filed by taxpayer. 11/7/39 copy served.

Nov. 27—Motion for extension to Jan. 6, 1940 to file brief filed by General Counsel. 11/28/39 granted and petitioner's reply brief due Feb. 6, 1940.

1940

Jan. 5—Motion for extension to Jan. 22, 1940 to file brief filed by General Counsel. 1/6/40 granted. Petitioner's reply due Feb. 21, 1940.

Jan. 22—Brief filed by General Counsel.

Feb. 23—Reply brief filed by taxpayer. 2/24/40 copy served.

Aug. 8—Memorandum findings of fact and opinion rendered, Harron, Div. 13. Decision will be entered under Rule 50.

Sept. 4—Agreed computation of deficiency filed.

Sept. 6—Decision entered, Harron, Div. 13.

Nov. 26—Petition for review by U. S. Circuit Court of Appeals, 10th Circuit, with assignments of error filed by General Counsel.

Dec. 2—Proof of service filed.

Dec. 5—Proof of service filed by General Counsel.

Dec. 21—Motion for extension to Feb. 24, 1941 to prepare and transmit record filed by General Counsel.

Dec. 21—Order enlarging time to Feb. 24, 1941 to prepare and transmit record entered.

1941

Jan. 8—Statement of points filed by General Counsel with affidavit of service thereon.

Jan. 8—Designation of portions of record to be contained in record f ed by General Counsel, with affidavit of service t ereon.

Jan. 21—Agreed d signation of additional portion of record to be cont ined in record filed by taxpayer with affidavit of m iling attached.

Jan. 23—Proof of service of filing designation of record filed by General Counsel.

Jan. 23—Proof of service of filing statement of points filed by General Counsel.

Amended Petition.

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in notice of deficiency, IT:R:E5:6-EFC-90D, dated January 28, 1939, and as a basis of its proceeding, alleges as follows:

1. The Petitioner now is, and during all the times herein mentioned has been, a corporation duly organized and existing under the laws of the State of Delaware, with its principal office and place of business at 104 Boston Building, Denver, Colorado. The corporation and personal holding company income tax returns here involved were filed with the Collector of Internal Revenue for the District of Colorado, at Denver, Colorado.

2. The notice of deficiency, a copy of which is attached hereto and marked "Exhibit A," was mailed to Petitioner on January 28, 1939.

3. The tax in controversy consists of income tax, excess profits tax and personal holding company surtax for the calendar year 1936. The Respondent by said notice of deficiency has determined a total deficiency of $16,985.03, consisting of $8,427.89 income tax, $2,381.88 excess profits tax, and $6,175.26 personal holding company surtax. Petitioner admits a deficiency of $486.43 income tax and $2,072.59 personal holding company surtax, a total admitted deficiency of $2,559.02. The amount in controversy, therefore, is a total tax of $14,426.01, consisting of $7,941.46 income tax, $2,381.88 excess profits tax and $4,102.67 personal holding company surtax.

4. The determination of the deficiency is based upon the following errors:

A. The holding of Respondent that the surrender by the Petitioner of $44,000.00 face value of Colorado Industrial Company 5% Bonds in exchange for $17,600.00 face value of 5% Income Mortgage Bonds and 880 shares of capital stock of The Colorado Fuel and Iron Corporation constituted a taxable exchange.

B. The holding of Respondent that the market value of the securities received at the date of the exchange was $85.25 for each $100.00 face value of 5% income mortgage bonds and $32.25 for each share of capital stock, a total of $43,384.00.

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

A. On March 1, 1935, there was filed in the District Court of the United States, for the District of Colo-

rado, In the Matter of The Colorado Fuel and Iron Company and Another, Debtors, Consolidated Cause No. 8081, a Plan of Reorganization. At that time the Colorado Fuel and Iron Company had outstanding its own General Mortgage 5% Bonds, preferred stock and common stock, and it was also the guarantor on the First Mortgage 5% Bonds of the Colorado Industrial Company, a subsidiary corporation.

On April 25, 1936, the Court approved the Plan of Reorganization, which provided that a new company should be organized with an authorized capital of 1,000,000 shares of stock and $11,053,200.00 5% Income Mortgage Bonds. The new company was to assume the payment of the General Mortgage 5% Bonds of the Colorado Fuel and Iron Company, which were not disturbed; was to issue $11,053,200.00 of its Income Mortgage Bonds and 552,660 shares of its stock, in exchange for the First Mortgage 5% Bonds of the Colorado Industrial Company, in the ratio of $400.00 face value of new bonds and 20 shares of stock for each $1,000.00 face amount of Colorado Industrial Company bonds and was to issue to preferred and common stockholders of the Colorado Fuel and Iron Company warrants to purchase certain specified amounts of stock of the new company at $35.00 per share on or before February 1, 1950; 315,379 shares of stock of the new company being reserved for this purpose.

In pursuance of the Plan of Reorganization, the Colorado Fuel and Iron Corporation was organized under the laws of the State of Colorado, and on June 20, 1936, the Court directed the Colorado Fuel and Iron Company, the Colorado Industrial Company, Arthur Roeder, Trustee, and The New York Trust Company, as Trustee under the Colorado Industrial Company Mortgage securing its First Mortgage 5% Bonds, to convey to The Colorado Fuel and Iron Corporation all of their right, title and interest in all of the assets of the Colorado Fuel and Iron Company and the Colorado Industrial Company. Simultaneously therewith, The Colorado Fuel and Iron Corporation was directed to deliver to, or on the order of, the Reorganization Managers, $11,053,200.00 of its Income Bonds, 552,660

shares of its stock and warrants representing the right to purchase 315,379 shares of its stock. This order further provided that upon the surrender of the outstanding bonds of Colorado Industrial Company to the Reorganization Managers, they should distribute to the holders thereof the Income Mortgage Bonds and capital stock of The Colorado Fuel and Iron Corporation to which they were entitled, respectively, under the Plan. And The New York Trust Company, Trustee, was directed to execute and deliver to The Colorado Fuel and Iron Corporation a satisfaction and discharge of the First Mortgage of the Colorado Industrial Company.

On July 1, 1936, the Plan of Reorganization was consummated in accordance with the foregoing order, and thereafter the Petitioner surrendered its $44,000.00 face amount of Colorado Industrial Company First Mortgage 5% Bonds in exchange for $17,600.00 face amount of the Income Mortgage Bonds and 880 shares of the stock of The Colorado Fuel and Iron Corporation.

At that time no shares of stock of The Colorado Fuel and Iron Corporation, other than the above-mentioned 552,660 shares of stock to be issued to the holders of Colorado Industrial Company First Mortgage 5% Bonds, were issued, so that immediately after the exchange, the holders of said Colorado Industrial Bonds were in control of The Colorado Fuel and Iron Corporation.

B. The market value of the securities received by the Petitioner did not exceed $79.00 for each $100.00 face value of 5% income mortgage bonds and $27.25 for each share of the capital stock, a total of $37,884.00.

Wherefore, Petitioner prays that the Board hear this proceeding and determine that there is no deficiency in income

tax, excess profits tax or personal holding company surtax for the year 1936.

JAMES B. GRANT,
First National Bank Building,
Denver, Colorado.
STEPHEN H. HART,
Stephen H. Hart,
First National Bank Building,
Denver, Colorado.
Attorneys for the Petitioner.

[Verification omitted.]

Exhibit A.

Treasury Department.
Washington.

January 28, 1939.

Cement Investors, Inc.,
104 Boston Building,
Denver, Colorado.

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1936 discloses a deficiency of $8,427.89, and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of $2,381.88, and that the determination of your surtax liability (section 351) for the year mentioned discloses a deficiency of $6,175.26, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the atten-

tion of IT:C1:P-7. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.
By JOHN R. KIRK,
Deputy Commissioner.

Enclosures:
Statement
Form of waiver.

Statement.

IT:R:E:5:6
EFC-90D

Cement Investors, Inc.,
104 Boston Building,
Denver, Colorado.

Tax Liability for Taxable Year Ended December 31, 1936.

	Liability	Assessed	Deficiency
Income Tax	$40,082.76	$31,654.87	$8,427.89
Excess-Profits Tax	4,344.87	1,962.99	2,381.88
Surtax (Section 351)	6,175.26	None	6,175.26

In making this determination of your tax liability, careful consideration has been given to the report of examination dated July 29, 1938; to your protest dated August 25, 1938; to the statement made at the conference held on September 29, 1938; and to your letter dated January 7, 1939.

Adjustments to Net Income.

Net income as disclosed by return	$738,813.48
Unallowable deductions and additional income:	
(a) Profit from exchange of securities	28,490.75
(b) Excess-profits tax for 1936	1,962.99
Net income adjusted	$769,267.22

Explanation of Adjustments

(a) Taxpayer held $44,000.00 par value of Colorado Industrial Company 5 percent thirty-year Gold Bonds, which bonds were guaranteed by Colorado Fuel and Iron Company. Colorado Fuel and Iron Company, reorganized under the name of Colorado Fuel and Iron Corporation, and exchanged its own bonds and common stock on September 1, 1936 for the Colorado Industrial Company bonds. The basis of the exchange was $400.00 par bonds and 20 shares of stock of the new company for each $1,000.00 par old bond. Taxpayer received for 44,000 par old bonds:

44x400 par bond	17,600 par
44x 20 shares of stock	800 shares

The Bureau holds that this was a taxable exchange and that the market value of the new securities on September 19, 1936, was:

Bonds	$85.25	
Stock	32.25	
Received in exchange:		
17,600 par bonds at $85.25		$15,004.00
800 shares of stock at $32.25		28,380.00
Total		43,384.00
Less:		
Cost of old bonds		14,893.25
Profit		$28,490.75

(b) As your books of account and records are on a cash basis, the excess-profits tax liability for 1936 is not an allowable deduction from income.

Computation of Tax.

Excess-Profits Tax:		
Taxable net income		$769,267.22
Less:		
Dividends received credit	$608,059.94	
10% of $1,000,000.00 value of capital stock as declared in your capital stock tax return for year ended June 30, 1936	100,000.00	708,059.94
Net income subject to excess-profits tax		$ 61,207.28
5% of declared value of capital stock		50,000.00
Balance		$ 11,207.28
Excess-profits tax:		
6% of $50,000.00		$ 3,000.00
12% of $11,207.28		1,344.87
Total excess-profits tax		$ 4,344.87
Excess-profits tax assessed, original, account No. 400714		1,962.99
Deficiency		2,381.88
Income tax:		
Normal tax:		
Net income for normal tax computation		$769,267.22
Less:		
Interest on United States obligations	$ 715.06	
Dividends received credit, for companies other than mutual investment companies	608,059.95	608,775.00
Normal tax net income		$160,492.22
8% of $ 2,000.00		$ 160.00
11% of $ 13,000.00		1,430.00
13% of $ 25,000.00		3,250.00
15% of $120,492.22		18,073.83
Total normal tax		$ 22,913.83

Surtax on Undistributed profits:		
Taxable net income		$769,267.22
Less:		
Normal tax	$22,913.83	
Interest on United States obligations, etc.	715.06	23,628.89
Adjusted net income		$745,638.33
Less:		
Dividends paid credit		578,853.00
		$166,785.33
7% of $74,563.83		$ 5,219.47
12% of $74,563.84		8,947.66
17% of $17,657.66		3,001.80
		$ 17,168.93
Total surtax		$ 17,168.93
Normal tax		22,913.83
Total income tax (normal tax and surtax)		$ 40,082.76
Income tax assessed (normal tax and surtax):		
Original, account No. 400714		31,654.87
Deficiency		$ 8,427.89

Computation of Surtax.
Section 351.

Adjusted Net Income.

Net Income		$769,267.22
Less:		
Federal income tax		1,428.36
Adjusted net income		$767,838.86

Undistributed Adjusted Net Income.

Less:		
20% of $767,838.86	$153,567.77	
Dividends paid during year	578,853.00	732,420.77
Undistributed adjusted net income		$ 35,418.09

Computation of Tax.

Section 351.

Undistributed net income	$ 35,418.09
Surtax at 8% on $ 2,000.00	160.00
Surtax at 18% on $33,418.09	6,015.26
Total surtax	$ 6,175.26
Total assessed	None.
Deficiency of surtax under Section 351 of the Revenue Act of 1936	$ 6,175.26

Filed Sept. 21, 1939. U. S. Board of Tax Appeals.

Answer to Amended Petition.

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits the allegations contained in paragraph 2 of the amended petition.

3. Admits the allegations contained in paragraph 3 of the amended petition.

4. A. Denies that respondent erred as alleged in subparagraph A of paragraph 4 of the petition.

B. Denies that respondent erred as alleged in subparagraph B of paragraph 4 of the petition.

5. A. Denies the matter set forth in subparagraph A of paragraph 5 of the petition, except it is admitted that petitioner surrendered $44,000.00 face amount of Colorado Industrial Company First Mortgage 5% Bonds in exchange for $17,600.00 face amount of the Income Mortgage Bonds and 880 shares of the stock of the Colorado Fuel and Iron Corporation.

B. Admits the matter set forth in subparagraph B of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the amended petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

Signed: J. P. WENCHEL, ARS
J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

R. P. HERTZOG, Division Counsel.
ANGUS ROY SHANNON, JR., Special Attorney,
Bureau of Internal Revenue.

Filed October 25, 1939. United States Board of Tax Appeals.

Memorandum Findings of Fact and Opinion.

Stephen H. Hart, Esq., and James B. Grant, Esq., for the petitioner.

Angus R. Shannon, Jr., Esq., and Carroll Walker, Esq., for the respondent.

Harron: The Commissioner determined deficiencies in income, excess profits, and surtax under section 351, for the year 1936 in the respective amounts of $8,427.89; $2,381.88; and $6,175.26, respectively, or a total of $16,985.03. The deficiency is contested only in part since petitioner concedes that other adjustments made by respondent are correct. The only question involved is whether the exchange of bonds of the Colorado Industrial Company for stock and bonds of the Colorado Fuel and Iron Corporation, a new corporation, pursuant to a plan of reorganization under section 77 B of the Bankruptcy Act constituted a reorganization under section 112 (b) (3) of the Revenue Act of 1936.

Findings of Fact.

The petitioner is a Delaware corporation with its principal office and place of business in Denver, Colorado. Prior to September 2, 1936, petitioner owned $44,000 face amount of bonds of the Colorado Industrial Company.

The Colorado Industrial Company, hereafter called Industrial, was a Colorado corporation. It was wholly owned by the Colorado Fuel and Iron Company, hereafter called Fuel and Iron, a Colorado corporation, which owned all of its capital stock consisting of 200 shares. Fuel and Iron had been engaged in the manufacture and sale of steel and iron products. Industrial was not engaged in any active business and had no assets of any substantial value, having transferred substantially all of its assets to Fuel and Iron in the year 1913.

Under date of August 1, 1904, Industrial issued bonds generally known as First Mortgage 5% Bonds which were secured by a mortgage or deed of trust of Industrial. The bonds matured August 1, 1934. These bonds of Industrial were unconditionally guaranteed both as to principal and interest by Fuel and Iron. These bonds were Industrial's only securities outstanding in the hands of the public. The total face amount of these bonds held by the public on August 1, 1934, was $27,633,000. Industrial defaulted in the payment of interest on these bonds due on August 1, 1933, and on subsequent interest installments; and Fuel and Iron defaulted under its guarantee of interest payments.

Fuel and Iron had outstanding in the hands of the public in 1933 $4,500,000 face amount of bonds known as General Mortgage 5% Bonds. On August 1, 1933, Fuel and Iron defaulted in the payment of the semi-annual interest due on its bonds. On the same day a receiver for the properties of Fuel and Iron was appointed by the United States District Courts of Colorado and Wyoming. Following the receivership of Fuel and Iron, committees were constituted for the purpose of representing bondholders and stockholders of Fuel and Iron and for the bondholders of Industrial. There was outstanding stock of Fuel and Iron consisting of 20,000 shares of 8% cumulative preferred stock, $100 par value per share, and 340,505 shares of common stock, no par value. The preferred stock was entitled to cumulative dividends at the rate of 8 per cent

per annum but ranked equally with the common stock in the distribution of assets. Dividends had not been paid on the preferred stock since November 25, 1931.

On August 1, 1934, when Industrial and Fuel and Iron defaulted on Industrial's First Mortgage 5% Bonds, each company filed petitions in the United States District Court for Colorado, instituting proceedings for reorganization under section 77 B of the Federal Bankruptcy Act. The previously appointed receiver of Fuel and Iron was appointed trustee of the estates of both companies in the reorganization proceedings.

A plan of reorganization of Fuel and Iron and Industrial, dated March 1, 1935, was drafted by the reorganization managers at the request of the separate committees for the bondholders of the two companies, and this proposed plan, pursuant to Section 77 B of the Bankruptcy Act was filed with the District Court. On May 1, 1935, an order of the District Court was entered finding and decreeing that the plan complied with the provisions of subdivision (b) of Section 77 B of the Bankruptcy Act, and that it had been duly prepared in accordance with subdivision (d) of Section 77 B. Among other things the court directed the trustee to mail copy of the plan and forms of acceptance of the plan to holders of bonds and stocks of Fuel and Iron, and of bonds of Industrial; which was done. Acceptances of the plan were filed by the holders of Industrial bonds and of the preferred and common stock of Fuel and Iron as follows:

Industrial bonds	$27,633,00	outstanding	75.7%	apprcved plan
Fuel & Iron Pfd. stock	20,000 shs.	"	61.3%	" "
" " " common	240,505 shs.	"	53.2%	" "

On April 25, 1936, the District Court entered its order confirming the plan. By this order the court approved the certificate of incorporation of a new corporation, the Colorado Fuel and Iron Corporation, hereafter referred to as the New Company. That certificate had been filed in the office of the Secretary of State of Colorado on April 16, 1936. The authorized capital of the New Company was 1,000,000 shares of common stock without par value. On June 20, 1936, the District Court entered its order approving forms of documents and directing the transfer of all of the assets of Fuel and Iron

and Industrial to the New Company, and directing other things; which was done by executing proper conveyances.

The purpose of the reorganization plan was as follows:

(1) To strengthen the capital structure of the enterprise, through drastic reduction of fixed charges and the provision of a financing medium for future financial requirements.

(2) To give full recognition to the paramount rights of bondholders.

(3) To enable the stockholders to regain an interest in the enterprise upon a basis which takes account of the present junior rank of the stockholders and of the relative rights and priorities of the two classes of stock.

The effect of the plan was to give to the holders of Industrial's bonds the entire ownership and control of the New Company, subject to $4,500,000 bonds of Fuel and Iron which were not to be disturbed in the reorganization. Since the Industrial bonds were in default on both principal and interest, the only stock of the New Company to be issued was 552,660 shares which were to be issued to the holders of Industrial bonds in exchange.

Under the approved plan of reorganization and orders of the District Court the following was done:

(1) As of July 1, 1936, the assets of Fuel and Iron and of Industrial were transferred by proper conveyances to the New Company.

(2) The New Company issued 552,660 shares of its stock to be distributed to holders of bonds of Industrial; reserved 315,379 shares to be applied against warrants; and reserved the remaining 131,961 shares for corporate purposes. It issued $11,053,200 principal amount of 5% Income Mortgage Bonds due April 1, 1970 to be distributed to Industrial's bondholders. It assumed payment of $4,500,000 general bonds of Fuel and Iron, which bonds were not affected by the reorganization plan. It issued warrants for the purchase, on or before April 1, 1950, of 315,379 shares of its stock at $35 a share to be distributed to the preferred and common stockholders of Fuel and Iron. The warrant agreement entered into between the New Company and the Chase National Bank of New York,

warrant agent, under date of July 1, 1936, provided that the holders of warrants should not have the right to vote or to receive notice as stockholders, and should have no rights whatsoever as stockholders of the New Company. The option price under the warrants was considerably higher than the opening market price for shares of the New Company.

(3) The reorganization managers gave notice to the holders of Industrial's bonds and Fuel and Iron's stock that the new securities would be available for distribution on September 1, 1936.

(4) At or about that date the holders of Industrial bonds surrendered their bonds for cancellation in exchange for Income Mortgage Bonds and stock of the New Company upon the basis of (a) $400 principal amount of Income Bonds and (b) 20 shares of common stock for each $1,000 principal amount of Industrial bonds. Immediately after the consummation of the plan all of the issued stock, 552,660 shares of common stock, of the New Company, belonged to the former holders of bonds of Industrial. No stock was issued to parties other than such bondholders until October 23, 1936, when 37 shares were issued upon the exercise of warrants, and by June 30, 1938 only 465 shares had been issued upon the exercise of warrants.

(5) At or about the same date warrants to purchase common stock of the New Company were distributed to preferred and common stockholders of Fuel and Iron as follows: For each share of preferred stock of Fuel and Iron, one warrant to purchase, on or before February 1, 1950, three shares of common stock of the New Company at $35 per share. For each share of common stock of Fuel and Iron there was given one warrant to purchase ¾ of one share of common stock of the New Company at $35 a share.

(6) The capital stock of Industrial was cancelled. Also, $7,741,000 principal amount of Industrial's bonds owned by Fuel and Iron were concelled. The first mortgage of Industrial which had secured its bonds was satisfied and discharged. These bonds had been held in Fuel and Iron's treasury but they had not been set up as an asset or liability on the books. The amount of Industrial's bonds that had been carried on Fuel and Iron's books as a liability was $27,633,000.

On September 2, 1936, petitioner surrendered its $44,000 principal amount of Industrial bonds and received in exchange $17,600 principal amount of Income Mortgage Bonds and 880 shares of stock of the New Company.

On the date of exchange the fair market value of the securities of the New Company received in exchange by petitioner was $79 for each $100 face amount of Income Mortgage Bonds and $27.25 for each share of stock. The adjusted basis of the Industrial bonds in the hands of petitioner was $14,893.25.

Opinion.

The facts in this case are identical with the facts in James Q. Newton Trust, 42 B. T. A. ...., promulgated August 6, 1940. Petitioner in this case, however, limited its contentions to the claim that the reorganization under section 77 B of the Bankruptcy Act constituted a reorganization within (C) of section 112 (g) (1) of the Revenue Act of 1936. Accordingly, in this case the opinion is limited to consideration of that contention.

We are of the opinion that the reorganization under section 77 B of the Bankruptcy Act constituted a reorganization under section 112 (b) (3) of the Revenue Act of 1936, within (C) of section 112 (g) (1)[1]. In our opinion the situation here is very much like the situation in Commissioner v. Kitselman, 89 Fed. 458; certiorari denied, 302 U. S. 709, and the question is controlled by that case. In the Kitselman case, after the various steps had been taken the bondholders of the old company were in control of the new company and this somewhat unusual situation presented difficulty because section 112 (g) (1) (C) predicates a reorganization on the requirement that the transferor or the stockholders of the transferor be in control of the new company. The court reasoned that where the old company is

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[1] SEC. 112. RECOGNITION OF GAIN OR LOSS.

* * * * * * * *

(g) Definition of Reorganization.—As used in this section and section 113—

(1) The term "reorganization" means (A) a statutory merger or consolidation, * * * or (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (D) a recapitalization, or (E) a mere change in identity, form or place of organization, however effected.

insolvent and its assets are transferred to a new company formed by the *boldholders'* representatives, the bondholders occupy a status somewhat akin to that of preferred stockholders, for all practical purposes. The court stated the following:

> Bondholders ordinarily are viewed as creditors, but when the assets of the corporation are less than its obligations, the bondholders are in actuality and for all practical purposes pretty much the corporation. * * *
>
> It is clear that the bondholders were the moving spirit and were treated as the owners in fact, and it follows that they must be viewed as a class of "stockholders" somewhat akin to preferred stockholders with cumulative dividend rights. * * * Where the assets of the corporation fall far below the amount required to pay the bondholders in full, the bondholders in bankruptcy reorganization supersede the stockholders. They acquire the stockholders' rights to manage the corporate affairs. There is a difference between the position of stockholders in a case like the present one and stockholders of a corporation in bankruptcy proceeding under section 77 B (U. S. C. A. § 207) to a reorganization, but the analogies are sufficient to justify a study of the decisions in the latter field.

The above reference in the quotation to a reorganization under section 77B of the Bankruptcy Act is significant here. In our opinion the situation in this case is as favorable, if not more favorable, to petitioner's contention than was the situation in the Kitselman case because here there was a reorganization under section 77 B of the Bankruptcy Act.

As in the Kitselman case, the difficulty is that of determining whether the holders of the Industrial bonds were the "transferor or its stockholders" within that clause in (C) of section 112 (g) (1). The situation is somewhat more complex here because there were two transferors, Industrial and Fuel and Iron, albeit they were subsidiary and parent corporations, and the holders of the Industrial bonds were creditors of both companies, Fuel and Iron having acquired substantially all the assets, securing the bonds under a first mortgage, and having unconditionally guaranteed the interest and principal of the

bonds of Industrial. However, this complexity is not important, in our opinion. Neither the bondholders nor the stockholders of either of the old companies received any profit from the reorganization. The old companies transferred all their assets to the New Company and immediately thereafter the old companies, through the bondholders, were in control of the corporation to which the assets were transferred. The holders of Industrial bonds were creditors having claims aggregating $27,633,000 for principal due, and $2,763,300 for interest due. They were the creditors with prior claims, secured by a first mortgage on assets in the hands of Fuel and Iron, and they were treated as the owners in fact of the asets transferred to the New Company. It must follow here as in the Kitselman case, that the holders of the Industrial bonds be viewed as a class of "stockholders." So viewed, they come within (C) of section 112 (g) (1).

The following is pointed out in support of the above conclusion. Industrial and Fuel and Iron had been placed in receivership and had petitioned for a reorganization under section 77 B of the Bankruptcy Act. The stockholders of both of the companies had lost their equity. This was recognized by the plan of reorganization under which the entire ownership of the New Company was turned over to the holders of Industrial bonds, and the stockholders were given, merely, warrants entitling them to purchase stock in the New Company at a price considerably above the then market value. The treatment accorded various security holders of the old companies is described in the plan of reorganization as follows:

> Under the Plan, the Industrial Bondholders are to receive for each $1,000 principal amount of Bonds (together with the unpaid interest thereon which amounted to 10% to February 1, 1935): (a) $400 principal amount of new 5% Income Mortgage Bonds and (b) 20 shares of new Common Stock. The Industrial Bondholders are to receive all of the new Income Mortgage Bonds and all of the new Common Stock of the New Company to be presently issued in the reorganization. The entire issue of Industrial Bonds outstanding in the aggregate principal amount of $27,633,000 is in default. Interest on the Industrial Bonds accrued and unpaid to

February 1, 1935 amounts to $2,763,300. Accordingly, in the first instance, the Plan gives to the holders of the Industrial Bonds the entire ownership and control of the New Company, subject to $4,500,000 of Fuel Bonds which are undisturbed in the reorganization.

The Plan, however, does not in its effect on stockholders operate as a strict foreclosure, since the stockholders are to receive Warrants entitling them at their option to purchase, at any time until February 1, 1950, a stock equity in the New Company at $35 per share. The price at which stockholders, under the terms of such Warrants, may regain an equity position in the enterprise, takes into consideration the basis upon which the Industrial Bondholders are to receive shares of new Common Stock in exchange for that part of their debt not covered by new Income Mortgage bonds. [Emphasis supplied.]

The assets of the old companies were transferred to the New Company, and immediately thereafter the bondholders were in control of the New Company by virtue of the immediate transfer of 552,660 shares of stock of the New Company to the reorganization managers, who were the agents of the bondholders. The holders of warrants to purchase new stock in the New Company had no control. Control relates to issued not to authorized stock. Louangel Holding Corporation v. Anderson, 9 Fed. Supp. 550; C. T. Investment Co. v. Commissioner, 88 Fed. (2d) 582. Clearly there was an exchange of securities in one corporation a party to a reorganization, in pursuance of a plan to the reorganization, solely for securities in another corporation a party to the reorganization. [Section 112 (b) (3).] All three corporations were parties to the reorganization. [Section 112 (g) (2).] The bondholders of Industrial retained a substantial stake or proprietary interest in the enterprise. There was a continuity of interest of the transferors in the transferee, evidenced by stocks and bonds of the New Company. The holders of Industrial bonds acquired the stockholders' rights to manage the corporate affairs.

With respect to the argument of respondent that the opinion in the LeTulle case indicates that the decision in the Kitselman case is wrong, and that Helvering v. Tyng, 308 U. S. 527, also

points that way, we believe the argument without merit. The fact that the bondholders herein retained a proprietary interest in the enterprise is a material difference between the factual situation in this case and the factual situation in either the LeTulle case or the Tyng case. Such cases are therefore clearly distinguishable and not applicable here. In the LeTulle case, when a stockholder of the transferor received bonds and cash of the transferee in exchange for his stocks, there was no continuity of interest. In the Tyng case, where the stockholders of the transferors received cash and long term indebtedness of the transferee in exchange for their stock, there was no continuity of interest. In both the LeTulle case and the Tyng case stockholders of the transferor became mere creditors of the transferee, whereas in this case creditors (the Industrial bondholders) became stockholders of the transferee and after the transfer, were in control of the corporation to which the assets were transferred. Also, we believe that E. P. Raymond, 37 B. T. A. 423, cited by respondent, is not applicable here. The point in this case is that the bondholders received all the presently issued stock of the New Company, thereby gaining control thereof.

It is held that the reorganization under section 77 B of the Bankruptcy Act was executed so as to constitute a reorganization as defined in section 112 (g) (1) (C), and the gain or loss resulting therefrom is not recognizable under section 112 (b) (3). See also, Commissioner v. Newberry Lumber & Chemical Co., 94 Fed. (2d) 447; Marlborough House, Inc., 40 B. T. A. 881; Edith M. Greenwood, 41 B. T. A. 664; Alabama Asphaltic Limestone Co., 41 B. T. A. 324.

In view of the foregoing it is not necessary to consider whether or not the transactions come within section 112 (b) (5).

Decision will be entered under Rule 50.

Enter:

Entered Aug. 8, 1940.

Decision.

Pursuant to Memorandum Findings of Fact and Opinion of the Board entered on August 8, 1940, the petitioner herein on September 4, 1940, having filed a recomputation of tax, and the respondent having agreed thereto, now, therefore, it is

Ordered and Decided: That there is a deficiency in income tax of $486.43 and no deficiency in excess profits tax and a deficiency in surtax of $2,072.59 for the taxable year 1936.

(s) MARION J. HARRON,
Member.

(Seal)

Enter:

Entered September 6, 1940.

Petition for Review and Assignments of Error.

To the Honorable Judges of the United States Circuit Court of Appeals for the Tenth Circuit:

Now Comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and Charles E. Lowery, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

Jurisdiction.

That he is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States; that the respondent on review, Cement Investors, Inc. (hereinafter referred to as the taxpayer), is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 104 Boston Building, Denver, Colorado. The taxpayer filed its Federal corporation income and excess-profits tax return (Form 1120) and its return of personal holding company (Form 1120H), both for the taxable year 1936, with the Collector of Internal Revenue for the District of Colorado, whose office is located in the City of Denver, Colorado, and within the judicial circuit of the United States Circuit Court of Appeals for the Tenth Circuit.

The Commissioner files this petition pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

II.

Prior Proceedings.

On January 28, 1939, the Commissioner determined a deficiency in Federal income tax liability against the taxpayer in the amount of $8,427.89, a deficiency in excess-profits tax liability in the amount of $2,381.88, and a deficiency in personal holding company surtax liability in the amount of $6,175.26, all for the year 1936, and sent to the taxpayer, by registered mail, a notice of said deficiencies in accordance with the provisions of existing internal revenue laws. Thereafter and on February 24, 1939, the taxpayer filed an appeal from said determination of the Commissioner with the United States Board of Tax Appeals.

The case was duly tried to the United States Board of Tax Appeals and on August 8, 1940, the Board entered its memorandum findings of fact and opinion, pursuant to which opinion decision was entered on September 6, 1940, wherein and whereby it was ordered and decided that there is a deficiency in income tax of $486.43 and no deficiency in excess profits tax and a deficiency in surtax of $2,072.59 for the taxable year 1936.

III.

Nature of Controversy.

Prior to September 2, 1936, the taxpayer was the owner of $44,000 face amount of first mortgage 5 per cent bonds of the Colorado Industrial Company, a Colorado corporation (hereinafter referred to as Industrial), which bonds were due on August 1, 1934. The capital stock of Industrial was wholly owned by the Colorado Fuel & Iron Company (hereinafter called Fuel & Iron) and its bonds were unconditionally guaranteed as to principal and interest by the latter company. Industrial's bonds of the face amount of $27,633,000 were held by the public on August 1, 1934 and $7,741,000 face amount thereof was held by Fuel & Iron. Industrial defaulted in the payment of interest on its bonds on August 1, 1933 and on subsequent interest installments, and Fuel & Iron defaulted under its guarantee of interest payments.

In 1933 Fuel & Iron had $4,500,000 face amount of general mortgage 5 per cent bonds outstanding in the hands of the public. It defaulted in the payment of the semi-annual interest due on those bonds on August 1, 1933. On the latter date a receiver was appointed for Fuel & Iron's properties by the United States District Courts of Colorado and Wyoming. When the two corporations later defaulted on Industrial's first mortgage 5 per cent bonds, on August 1, 1934, each company filed a petition with the United States District Court of Colorado seeking a reorganization under Section 77B of the Federal Bankruptcy Act, whereupon the receiver previously appointed for Fuel & Iron was appointed trustee of the properties of both companies. On April 25, 1936, the District Court confirmed a plan of reorganization previously filed with the Court and accepted by a majority of Industrial's bondholders and Fuel & Iron's common and preferred stockholders. The Court approved the certificate of incorporation of a new corporation, the Colorado Fuel & Iron Corporation, and on June 20, 1936, entered its order directing, among other things, the transfer of all of the assets of Fuel & Iron and Industrial to the new corporation which was done, as of July 1, 1936 by the execution of proper conveyances.

Under the plan of reorganization as approved by the Court, the only stock of the new company to be issued was 552,660 shares which were to be issued to the holders of Industrial's bonds in exchange. Pursuant to the plan the new company issued 552,660 shares of its stock to be distributed to the holders of Industrial's bonds, reserved 315,379 shares to be applied against warrants which it issued, in accordance with the plan, to the preferred and common stockholders of Fuel & Iron, and reserved the remaining 131,961 shares for corporate purposes. The warrants were issued, under the plan, to enable Fuel & Iron's stockholders to regain an interest in the enterprise, if they so desired, at $35 a share on or before April 1, 1950, but the warrant agreement filed with the Chase National Bank of New York, warrant agent, provided that the holders of warrants should have no rights whatsoever as stockholders of the new company. During the year 1936, only 37 shares of stock of the new company were issued by reason of the exercise of warrants. The new company also issued, pursuant to the plan, $11,053,200 principal amount of five percent

income mortgage bonds due April 1, 1970, to be distributed to Industrial's bondholders, and assumed payment of the $4,500,000 face amount of Fuel & Iron's general bonds. Industrial's bondholders thereupon gained the entire ownership and control of the new company subject to the $4,500,000 bonds of Fuel & Iron which were not disturbed in the reorganization.

On September 2, 1936, the taxpayer surrendered its industrial bonds in the face amount of $44,000 and received therefor $17,600 face amount of income mortgage bonds and 880 shares of stock of the new company. In its Federal income and excess profits tax return and its personal holding company return the taxpayer reported no gain or loss on the exchange. In his notice of deficiency the Comissioner treated the exchange as a taxable one. The taxpayer contended that the Section 77B reorganization of Fuel & Iron and Industrial constituted a nontaxable reorganization under Section 112 of the Revenue Act of 1936. The Board of Tax Appeals agreed with the taxpayer's contention and redetermined its tax liability accordingly.

IV.

Assignments of Error.

The Commissioner avers that in the record and procedings before the United States Board of Tax Appeals and in the opinion and final decision rendered and entered by the United States Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the Commissioner who now assigns the following errors and each of them, which he avers occurred in said record, proceedings, opinion, and final decision so rendered and entered by the United States Board of Tax Appeals:

The United States Board of Tax Appeals erred—

1. In ordering and deciding that there is a deficiency in income tax for the year 1936 in the amount of only $486.43, a deficiency in surtax in the amount of only $2,072.59, and no deficiency in excess profits tax.

2. In failing to sustain the deficiencies determined by the Commissioner, less a proper reduction of said deficiencies to reflect the adjustments agreed upon by the parties at the hearing before the United States Board of Tax Appeals.

3. In holding and deciding that the reorganization under Section 77B of the Bankruptcy Act constituted a reorganization under Section 112 (b) (3) of the Revenue Act of 1936, coming within the definition of a reorganization in Section 112 (g) (1) (C).

4. In failing to hold and decide that the reorganization under Section 77B of the Bankruptcy Act did not constitute a reorganization under Section 112 (b) (3) of the Revenue Act of 1936, coming within the definition of a reorganization in Section 112 (g) (1) (C).

5. In holding that there was a continuity of interest of the transferors in the transferee within the scope and meaning of Section 112 (g) (1) (C) of the Revenue Act of 1936.

6. In holding and deciding that the gain resulting to the taxpayer from the exchange was not recognizable under Section 112 (b) (3).

7. In that its opinion and decision are not supported by its findings of fact and are contrary to law.

Wherefore, the Commissioner petitions that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Tenth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd.) SAMUEL O. CLARK, JR.,
Assistant Attorney General.
(Signed) J. P. WENCHEL,
RLW
J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
CHARLES E. LOWERY,
Special Attorney,
Bureau of Internal Revenue.

Filed Nov. 26, 1940.

Notice of Filing Petition for Review.

To: Stephen H. Hart, Esq., James B. Grant, Esq., First National Bank Building, Denver, Colorado.

You are hereby notified that the Commissioner of Internal Revenue did, on the 26th day of November, 1940, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Tenth Circuit of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

(s) B. D. GAMBLE,
Clerk, United States Board
of Tax Appeals.

Service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 28th day of November, 1940.

(s) STEPHEN H. HART,
Counsel for Respondent
on Review.

Filed Dec. 2, 1940.

Notice of Filing Petition for Review.

To: Cement Investors, Inc., 104 Boston Building, Denver, Colorado.

You are hereby notified that the Commissioner of Internal Revenue did, on the 26th day of November, 1940, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Tenth Circuit of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

(Signed) J. P. WENCHEL,
J. P. Wenchel, RLW
Chief Counsel, Bureau
of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 2nd day of December, 1940.

CEMENT INVESTORS, INC.,
By (s) C. K. BOETTCHER, Pres.
Respondent on Review.

Filed Dec. 5, 1940.

Statement of Points.

Comes now the petitioner on review herein and makes this concise Statement of Points on which he intends to rely on the review herein, to-wit:

The United States Board of Tax Appeals erred—

1. In ordering and deciding that there is a deficiency in income tax for the year 1936 in the amount of only $486.43, a deficiency in surtax in the amount of only $2,072.59, and no deficiency in excess profits tax.

2. In failing to sustain the deficiencies determined by the Commissioner, less a proper reduction of said deficiencies to reflect the adjustments agreed upon by the parties at the hearing before the United States Board of Tax Appeals.

3. In holding and deciding that the reorganization under Section 77B of the Bankruptcy Act constituted a reorganization under Section 112 (b) (3) of the Revenue Act of 1936, coming within the definition of a reorganization in Section 112 (g) (1) (C).

4. In failing to hold and decide that the reorganization under Section 77 B of the Bankruptcy Act did not constitute a reorganization under Section 112 (b) (3) of the Revenue Act of 1936, coming within the definition of a reorganization in Section 112 (g) (1) (C).

5. In holding that there was a continuity of interest of the transferors in the transferee within the scope and meaning of Section 112 (g) (1) (C) of the Revenue Act of 1936.

6. In holding and deciding that the gain resulting to the

taxpayer from the exchange was not recognizable under Section 112 (b) (3).

7. In that its opinion and decision are not supported by its findings of fact and are contrary to law.

Signed: J. P. WENCHEL,
CAR
J. P. Wenchel,
Chief Counsel, Bureau
of Internal Revenue.

Statement of Service:

A copy of this Statement of Points was mailed to attorneys for respondent on review this date, January 8, 1941.

(s) J. P. WENCHEL,
J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue.

Service of a copy of the within statement of points is hereby admitted this 13th day of January, 1941.

(s) STEPHEN H. HART,
Attorney for Respondent
on Review

Filed Jan. 8, 1941.

Designation of Portions of Record to Be Contained in Record on Review.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause, in connection with the petition for review by the said Circuit Court of Appeals for the Tenth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board:
   (a) Amended petition, including annexed copy of deficiency letter and statement attached thereto.
   (b) Answer to amended petition.

3. Memorandum findings of fact and opinion entered August 8, 1940.

4. Decision entered September 6, 1940.

5. Petition for review, together with proof of service of notices of filing petition for review and of service of a copy of petition for review.

6. Statement of Points.

7. This designation of portions of record to be contained in record on review.

Signed J. P. WENCHEL,
CAR
J. P. Wenchel,
Chief Counsel, Bureau
of Internal Revenue.

Statement of Service:

A copy of this designation of portions of record to be contained in record on review was mailed to attorneys for respondent on review this date, January 8, 1941.

(s) J. P. WENCHEL,
J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue.

Filed Jan. 8, 1941.

Stipulation of Facts.

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective counsel, that the following is a true statement of the facts herein involved:

1. Petitioner now is, and during all the times herein mentioned has been, a corporation duly organized and existing under the laws of the State of Delaware, with its principal office and place of business at 104 Boston Building, Denver, Colorado. The corporation and personal holding company income tax returns herein involved (copies of which, marked, respectively, Exhibits "A" and "B", are attached hereto and by this reference made a part hereof) were filed with the Collector of Internal Revenue for the District of Colorado, at Den-

ver, Colorado. During all the times mentioned herein petitioner has kept its books and filed its returns on a cash receipts and disbursement basis.

2. The notice of deficiency, (copy of which, marked "Exhibit C", is attached hereto) was mailed to petitioner on January 28, 1939.

3. The tax in controversy consists of income tax, excess profits tax and personal holding company surtax for the calendar year 1936. The respondent, by said notice of deficiency, has determined a deficiency of $16,985.03, consisting of $8,427.89 income tax, $2,381.88 excess profits tax and $6,175.26 personal holding company surtax. Petitioner admits a deficiency of $486.43 income tax and $2,072.59 personal holding company surtax, a total admitted deficiency of $2,559.02. The amount in controversy, therefore, is a total tax of $14,426.01, consisting of $7,941.46 income tax, $2,381.88 excess profits tax and $4,102.67 personal holding company surtax.

4. On March 12, 1935 there was filed in the District Court of the United States, for the District of Colorado, In the Matter of The Colorado Fuel and Iron Company and Another, Colorado Corporations, Debtors, Consolidated Cause No. 8081, a Plan of Reorganization (a copy of which, marked "Exhibit D" is attached hereto and by reference made a part hereof). At that time The Colorado Fuel and Iron Company had outstanding its own General Mortgage Five Per Cent. Bonds, preferred stock and common stock, and it was also the guarantor on the First Mortgage Five Per Cent. Bonds of The Colorado Industrial Company, a wholly owned subsidiary. These bonds of The Colorado Industrial Company were its only securities outstanding in the hands of the public. Both of these corporations were before the Court on their petitions for reorganization under Section 77-B of the Bankruptcy Act, filed August 1, 1934.

5. On March 12, 1935 the Court entered its order finding that the Plan had been proposed in accordance with the provisions of Section 77-B and ordering that the holders of Colorado Industrial Company Bonds and the preferred and common stockholders of The Colorado

Fuel and Iron Company be notified of the Plan and given the opportunity to express their acceptance thereof. Copies of said Order and of the form of acceptance for bonds in registered and in bearer form, marked Exhibits "E", and "F" and "G", are attached hereto and by this reference made a part hereof.

6. On April 25, 1936 the Court entered its Findings of Fact and Conclusions of Law and its Order confirming the Plan of Reorganization and finding that it was fair and equitable and did not discriminate unfairly in favor of any class of creditors or stockholders. A copy of these Findings, Conclusions and Order, marked Exhibit "H", is attached hereto and by this reference made a part hereof. The Plan of Reorganization, as so approved, provided that a new company should be organized with an authorized capital of 1,000,000 shares of stock and $11,053,200.00 Five Per Cent. Income Mortgage Bonds. The new company was to assume the payment of the General Mortgage Five Per Cent. Bonds of The Colorado Fuel and Iron Company. It was to issue $11,053,200.00 of its Income Mortgage Bonds and 552,660 shares of its stock in exchange for the bonds of The Colorado Industrial Company guaranteed by The Colorado Fuel and Iron Company, in the ratio of $400.00 face value of new bonds and 20 shares of stock for each $1,000.00 face amount of Colorado Industrial Company bonds. Since the Industrial Company bonds were then in default on both principal and interest, such 552,660 shares issued to the holders of Industrial Bonds were the only shares of the new company to be presently issued. The new company was to give to the preferred and common stockholders of the old Colorado Fuel and Iron Company merely warrants to purchase certain specified amounts of stock of the new company at $35.00 per share on or before February 1, 1950, which option price was considerably higher than the opening market price for shares of the new company. Three Hundred fifteen thousand, three hundred seventy-nine shares of stock of the new company were reserved for this purpose. Thus, the Plan provided that 1,000,000 shares of the new Company should be authorized. Of this number, 552,660 shares were to

be issued to the holders of Industrial Bonds; 315,379 shares were to be reserved to apply against warrants, when, as and if the option were exercised; and the remaining 131,961 shares were reserved for corporate purposes.

7. In pursuance of the Plan of Reorganization and the Orders of April 25, 1936, the new company, The Colorado Fuel and Iron Corporation, was organized under the laws of the State of Colorado, and on June 20, 1936 the Court entered its Order approving the form of documents and directing the transfer of assets to, and the issuance of securities and assumption of liabilities by, the new company. A copy of this Order, marked "Exhibit I", is attached hereto and by this reference made a part hereof. It provided that on July 1, 1936, The Colorado Fuel and Iron Company, The Colorado Industrial Company, Arthur Roeder, Trustee of the assets of both, and The New York Trust Company, as Trustee under the Colorado Industrial Company mortgage, should convey to The Colorado Fuel and Iron Corporation all their right, title and interest in all of the assets of The Colorado Fuel and Iron Company and the Colorado Industrial Company. Simultaneously, or promptly thereafter, The Colorado Fuel and Iron Corporation was directed to deliver to, or on the order of, the Reorganization Managers $11,053,200.00 of its Income Bonds, 552,660 shares of its stock and warrants representing the right to purchase 315,379 shares of its stock. Simultaneously, or promptly thereafter, The New York Trust Company, as Trustee of this first mortgage of the Industrial Company, was directed to execute a satisfaction and discharge of the First Mortgage of the Industrial Company. As soon as reasonably practicable, the Reorganization Managers were directed to distribute to the holders of Industrial Bonds the new Income Bonds and all of the stock of the new company to be issued, and to distribute to the preferred and common stockholders of the old company warrants to purchase stock in accordance with the terms of the warrant agreement. A copy of said warrant agreement, marked "Exhibit J", is attached hereto and made a part hereof.

8. The Order further provided as follows (Ar. Two, Par. F, p. 7):

"The provisions of this Order directing the transfer and delivery of the properties and assets of the Debtors to the New Company, the assumption by the New Company of certain obligations of the Debtors and of the Trustee as hereinabove and in Article Three hereof provided, and the issue by the New Company to or on the order of, and the distribution by, the Reorganization Managers of the New Securities, shall be a single and entire order and direction, notwithstanding the provisions hereof permitting the transfer of said properties and assets forthwith and without awaiting the assumption by the New Company of said liabilities or the issue, delivery and distribution of the New Securities."

Similarly it directed that any dividends or interest paid with respect to any of the new securities during the period when such new securities were held by the Reorganization Managers or distributing agents should be held by them and paid to the holders of the Industrial Bonds as soon as the physical exchange was effected.

9. Pursuant to Article Five of said Order of June 20th, the Reorganization Managers gave notice to the holders of Industrial Bonds that the new securities would be available for distribution on September 1, 1936. A copy of this notice, marked "Exhibit K", is attached hereto and by this reference made a part hereof. Thereafter, on September 2, 1936, the petitioner surrendered its $44,000.00 face amount of Colorado Industrial Company First Mortgage Five Per Cent. Bonds in exchange for $17,600.00 face amount of the Income Mortgage Bonds and 880 shares of the stock of The Colorado Fuel and Iron Corporation. At the same time and in due course the other holders of Industrial Bonds surrendered their certificates for cancellation in exchange for Income Bonds and shares of stock in the new company upon the same basis as provided in the Plan.

10. Pursuant to the Order of June 20, 1936, the properties of The Colorado Fuel and Iron Company and the Colorado Industrial Company, and all the right,

title and interest of the Trustees under the Industrial Company Mortgage were transferred to the new company as of July 1, 1936, as is recited in the final report of the Reorganization Trustee, dated September 12, 1938 and filed September 13, 1938. A copy of said conveyance, marked "Exhibit L", and an extract from said report, marked "Exhibit M", are attached hereto and by this reference made a part hereof. By June 30, 1938, $11,029,200.00 face value Income Bonds and 551,460 shares of stock in the new company had been distributed in exchange for Industrial Bonds pursuant to the Plan and the Order of April 25, 1936, leaving only $24,000.00 face value of Income Bonds and 1200 shares of stock still to be distributed. On the same date all but 1,714 shares of preferred stock in the old company, out of 20,000 shares, and all but 20,572 shares of common stock in the old company, out of 340,505 shares, had been exchanged for warrants. On the same date only 465 shares of stock in the new company had been issued for cash upon the exercise of the warrants; all as recited in Exhibit "M", the extract from the Final Report of the Trustee. The first exercise of the warrant options for purchase of stock in the new company occurred on October 23, 1936, and it was for 37 shares.

11. Immediately after the consummation of the plan of liquidation, 552,660 shares of stock of the new company were issued, and all of these shares belonged to the holders of Industrial Bonds in accordance with the provisions of the Plan and the order of April 25, 1936. No stock was issued to parties other than the Industrial bondholders until October 23, 1936, and by June 30, 1938 only 465 shares had been issued to other parties (the 465 shares referred to above as issued upon the exercise of warrants). The warrant agreement, Exhibit "J", provided, in Article Twelfth thereof, that the holders of warrants should not have the right to vote or to receive notice as stockholders, nor should they have any rights whatsoever as stockholders.

12. On the date of exchange the fair market value of the securities received in exchange for Industrial Bonds was $79.00 for each $100.00 face amount of Income Bonds and $27.25 for each share of stock in the

new company, a total of $37,884.00. The adjusted basis of the Industrial Bonds in the hands of petitioner was $14,893.25.

By Order of Court, dated October 12, 1938, and filed November 18, 1938, copy of which, marked "Exhibit "N", is attached hereto and by this reference made a part hereof, the reorganization proceedings were concluded and the Trustee discharged.

It is further stipulated and agreed that either party hereto may introduce such further and additional evidence, not inconsistent with the facts above stipulated, as may be material to any of the issues herein, and that the exhibits attached hereto and referred to herein may be given the same force and effect as if the same had been duly offered and received in evidence in open court.

Dated this 19th day of September, 1939.

JAMES B. GRANT.
STEPHEN H. HART,
Stephen H. Hart,
Counsel for Petitioner.

J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

(Filed at Hearing, Sep. 21, 1939.)

Exhibit "A"

39

RETURN [illegible] ATTACHED WITH THIS ORIGINAL RETURN

Form 1120
TREASURY DEPARTMENT
Internal Revenue Service

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
For Calendar Year 1936

Page 1 of Return

No. 63
Serial 400714 E2
District [illegible]

For Calendar Year beginning ..., 1936, and ended ..., 1937

(NOTE: ALL FLORIDA CORPORATIONS MUST FILE AND BE DULY ASSESSED)

DEC 8 '37 REV ACT 1936
Income Tax $ 1,442.82
Penalty ... $
Interest
Ex. Prof. Tax 4,337.72
Additional $
Interest $
Total $
Rec'd remittance in full
Amt. for C.T.C. Unit

CHENAY INVESTORS, INC.
(Name)

104 HOUSTON BUILDING
(Street and number)

DALTON, COLORADO
(Post office) (County) (State)

Page ... Line ...

FEDERAL CO.

INCOME-PROFITS TAX COMPUTATION

1. Net income subject to income-profits tax (amount of item 6)				738	813 68
2. Amount taxable at 6 percent (item 7 or 8 percent of item 1, whichever is less)				738	813 68
3. Amount taxable at 12 percent (item 7 minus item 6)					
4. Income-profits tax at 6 percent (6 percent of item 2)					
5. Income-profits tax at 12 percent (12 percent of item 3)					
6. Total income-profits tax (total of items 4 and 5)					
7. Net income subject to income-profits tax (amount of item 1)		1	000	000	00
8. Net income for income-profits tax computation (item 27, page 2)			740	778	47
9. Less: Dividends received credit (85 percent of item 13 (c), page 2)			608	088	84
10. Balance of net income			132	716	88
11. Less: 10 percent of item 1			100	000	00
12. Net income subject to income-profits tax (enter forward as item 7)			32	716	88

Note.—Where an affiliated group of railroad corporations makes a consolidated income tax return, the common parent corporation which is liable for the making of an income-profits tax return must make a separate income-profits tax return on this form. (See Instruction 2(b).)

INCOME TAX COMPUTATION

NORMAL TAX *

13. Net income for normal tax computation (item 26, page 2)							738	813	68
14. Less: Interest on obligations of United States, etc. (item 4, page 2)			715	08					
15. Dividends received credit (85 percent of item 13 (c), page 2 (this credit not allowed to mutual investment companies))		608	088	84					
16. Dividends paid credit (this credit allowed only to mutual investment companies)									
17. Normal-tax net income (item 13 minus items 14 and 15 or 14 and 16)							132	098	84
18. Tax on portion of item 17 not in excess of $5,000	Portion of item 17				4%			5	280	00
19. Tax on portion of item 17 in excess of $5,000 and not in excess of $15,000		12	000	00	6%		1	680	00
20. Tax on portion of item 17 in excess of $15,000 and not in excess of $25,000					8%				
21. Tax on portion of item 17 in excess of $25,000		20	098	84	10%		2	098	84
22. Total Normal Tax (Amount of tax in items 18 to 21, inclusive)							3	778	84

* ☐ Foreign corporations engaged in trade or business within the United States or having an office or place of business therein are taxable at the rate of 22 percent on item 17, and ☐ certain banks and trust companies (see Instruction 31), ☐ corporations entitled to the benefits of Section 261 of the Revenue Act of 1936, ☐ corporations organized under the China Trade Act, 1922, and ☐ insurance companies are taxable at the rate of 18 percent on item 17, instead of at the rates prescribed in items 18 to 21, inclusive, above. In each case the amount of tax should be entered on item 22, and the taxpayer's classification should be indicated by a check mark (✓) in the appropriate box appearing in this note.

SURTAX ON UNDISTRIBUTED PROFITS
(See Instruction 32 regarding corporations exempt from surtax)

23. Net income for surtax computation (item 26, page 2)							738	813	68
24. Less: Normal tax (item 22, above)		13	345	77					
25. Interest on obligations of United States, etc. (item 4, page 2)			715	08					
26. Credit allowable to holding company affiliate (see Instruction 34)									
27. Credit allowable to national mortgage association (see Instruction 34)							19	080	85
28. Adjusted net income (item 23 minus items 24-27)							719	733	83
29. Less: Dividends paid credit (see Instruction 33)		578	863	00			578	863	00
30. Credit for undistributed statutory dividend payments (see Instruction 36)									
31. Undistributed net income (item 28 minus items 29 and 30)							140	869	83
32. Less: Specific exemption, only where undistributed net income (item 28, above) is less than $50,000 (item 31 or $2,500, whichever is less, minus 10% of item 28) (see Instruction 37)							140	869	83
33. Remainder subject to surtax (item 31 minus item 32)									
34. Tax on portion of item 33 not in excess of 10% of item 28	Portion of item 33	72	874	22	7%		5	056	17
35. Tax on portion of item 33 in excess of 10% and not in excess of 20% of item 28		68	994	58	12%		8	220	35
36. Tax on portion of item 33 in excess of 20% and not in excess of 30% of item 28					17%				
37. Tax on portion of item 33 in excess of 30% and not in excess of 40% of item 28					22%				
38. Tax on portion of item 33 in excess of 40% of item 28					27%				
39. Amount of tax in items 34 to 38, inclusive							13	276	52
40. Plus 7% of amount of specific credit (item 32)								33	58
41. Total Surtax (item 39 plus item 40)								13	309 10
42. Total Normal Tax and Surtax (item 22 plus item 41)								17	084 82
43. Less: Income tax paid to a foreign country or United States possession by a domestic corporation (see Instruction 39)									
44. Balance of Tax (item 42 minus item 43)								17	084 82

Page 2 of Return.

Date of incorporation ..... October 9, 1924 ..... Under the laws of what State or country ..... Delaware

The corporation's books are in care of ..... L. A. Sargent ..... Located at ..... Denver, Colorado

Kind of business (in detail) ..... Investments ..... Is this a consolidated return of railroad corporations? ..... No ..... If so, of how many corporations? .....

If this is not a consolidated income tax return of railroad corporations, did the corporation at any time during its taxable year own 20 percent or more of the voting stock of another corporation or corporations? ..... No ..... If so, attach separate schedule showing with respect to each corporation: (1) name and address of corporation, (2) percentage of stock owned, (3) date stock was acquired, and (4) the collector's office in which the corporation's income tax return for the taxable year was filed.

Is the corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1936? ..... Yes ..... (If so, an additional return on Form 1120H must be filed.)

Did the corporation make a return of information on Forms 1099 and 1099 (see instruction 46) for the calendar year 1936? .....

NET INCOME COMPUTATION

GROSS INCOME									
1. Gross Sales (where inventories are not an income-determining factor), $ ..... Less Returns and Allowances, $ ..... Net Sales									
2. Less Cost of Goods Sold:									
(a) Inventory at beginning of year									
(b) Material or merchandise bought for manufacture or sale									
(c) Miscellaneous costs (from Schedule A, Column 1): (1) Salaries and wages, $ ..... (2) Other costs, $ ..... Total									
(d) Total of lines (a), (b), and (c)									
(e) Less inventory at end of year									
3. Gross Profit from Sales (Item 1 minus Item 2)									
4. Gross Receipts (where inventories are not an income-determining factor)									
5. Less cost of operations (from Schedule A, Column 2): (a) Salaries and wages, $ ..... (b) Other costs, $ ..... Total									
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)									
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.							2 [illegible]	[illegible]	
8. Interest on Government obligations, etc. (from Schedule B, Lines 4 (a) (b) and (7))							[illegible]	[illegible]	
9. Rents									
10. Royalties									
11. Capital Gain or Loss (from Schedule D) (If loss, enter such loss or $2,000, whichever is less)							[illegible]	[illegible]	
12. Dividends on Stock of:									
(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1936							[illegible]	[illegible]	
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1936									
(c) Foreign Corporations									
13. Other Income (State nature of income) (Use separate schedule, if necessary)									
14. Total Income as Items 3 and 6 to 13, inclusive								[illegible]	[illegible]
DEDUCTIONS									
15. Compensation of Officers (from Schedule C)							[illegible]	[illegible]	
16. Rent on Business Property									
17. Repairs (from Schedule B). (a) Salaries and Wages, $ ..... (b) Other Costs, $ ..... Total									
18. Bad Debts (from Schedule F), also bonds determined to be worthless during taxable year (explain on separate sheet)									
19. Interest Paid (from Schedule G)									
20. Taxes Paid (from Schedule H). (Do not include Federal Income-Profits Tax Reported in Item 22, below)							[illegible]	[illegible]	
21. Contributions or Gifts (from Schedule I)									
22. Losses by Fire, Storm, etc. (from Schedule J)									
23. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (from Schedule K)									
24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 24)									
25. Other Deductions Authorized by Law (explain below, or on separate sheet):									
(a) Salaries and wages. (Not included in Items 2, 5, 15, or 17 above)									
(b) Bonds determined to be worthless during the taxable year									
(c) Schedule Attached							[illegible]	[illegible]	
26. Total Deductions as Items 15 to 25, inclusive									[illegible]
27. Net Income for Excess-Profits Tax Computation (Item 14 minus Item 26)									[illegible]
28. Less: Personal Excess-Profits Tax (Item 35, Page 1)									[illegible]
29. Net Income for Income Tax Computation (Item 27 minus Item 28)									[illegible]

Items	Amount
Salaries and wages	
Other costs	

Items	Amount
Salaries and wages	
Other costs	

SCHEDULE D—CAPITAL GAINS AND LOSSES (FROM SALES OR EXCHANGES ONLY) (See Instruction 10)

1. Description of Property	2. Date Acquired (Mo. Day Yr.)	3. Date Sold (Mo. Day Yr.)	4. Gross Sales Price	5. Cost	6. If sold before March 1, 1913, Fair Market Value as of March 1, 1913	7. Cost or Other Basis, as adjusted (Col. 5 or Col. 6)	8. Depreciation allowed (or allowable) since acquisition (Col. 5 or Col. 6)	9. Gain or Loss

Gain or Loss (enter net amount on Item 11, page 2; if net amount is a loss, enter that amount or $2,000, whichever is less)

State (1) how property was acquired ..... (2) whether at time of sale or exchange purchaser owned more than 20% in value of your outstanding stock .....

Every sale or exchange of stock should be reported in detail, including name and address of corporation, class of stock, number of shares, nominal changes affecting book values, dividends, other nontaxable dividends, stock rights, etc.).

Cost of property must be entered in column 5 if a loss is claimed in column 9

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 12)

1. Name and Address of Person	2. Business Title	3. Time Devoted to the Business	Percent of Stock Owned 4. Common	5. Preferred	6. Amount of Compensation (Enter also on page 2)
E. E. Smithhisler	Manager	Pres.	Part	$270	$ 6000 00
Charles Smithhisler II	Manager		Part	100	2400 00
L. A. Shepard					300 00
L. C. Shaw					300 00
				Total	$9000 00

Note: Schedule C-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of $15,000 was paid to any officer or employee.

SCHEDULE E—INCOME FROM DIVIDENDS (See Instruction 13)

Receipts below all dividends received during the year, stating the amount and the name and address of the corporation which declared the dividend

SCHEDULE F—COST OF REPAIRS (See Instruction 17)

Items	Amount (Enter also on page 2)
Salaries and wages	
Other costs	

SCHEDULE F—BAD DEBTS (See Instruction 18)

Year	Total amount	Recovered during year	Total Debts
1932			
1933			
1934			
1935			
1936			

SCHEDULE G—INTEREST PAID (See Instruction 19)

To Whom Paid	Amount (Enter also on page 2)

SCHEDULE H—TAXES PAID (See Instruction 20)

Nature of Tax	To Whom Paid	Amount (Enter also on page 2)
Franchise Tax	Secretary of State of Delaware	$ 75 00
Capital Stock Tax	Collector of Internal Revenue	1000 00
	Total	1075 00

Totals (Enter on Page 2, page 1, subject to 2% limitation see Instruction 6.)

SCHEDULE A—EXPLANATION OF DEDUCTIONS FOR LABOR OF FARM, STORE, ETC. (See Instruction 10)

1. Name of Purchaser	2. Date purchased	3. Cost	4. Inventory	5. Inventory at end of year	6. Inventory at end of year	7. Amount for use

State how property was acquired

SCHEDULE B—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 11)

1. Kind of Property (If building, state character of same)	2. Date Purchased	3. Cost or Valuation as of Mar. 1, 1913, or Date Purchased	4. Amount Claimed as Deduction for Year	5. Depreciation Allowed (or Actual Loss) in Previous Years	6. Remaining Cost or Value at Beginning of Year	7. Less Charged to Operating Expense or Profit and Loss During Year	8. Remainder to be Carried Forward at End of Year	9. Depreciation Rate Per Cent (Show in Col. 9, page 2)

NATURE OF BUSINESS

1. Check the blank to indicate the industrial division in which the corporation's gross income predominates for business done

MANUFACTURING

Food and kindred products:
- [ ] Bakery and confectionery products
- [ ] Canned products—fish, fruit, vegetables, etc.
- [ ] Milk products—cheese, cream, etc.
- [ ] Packing house products—sausage, lard, oleomargarine
- [ ] Sugar—beet, cane, maple, sorghum, etc.
- [ ] Other food products—flour, cereal preparations, etc.
- [ ] Beverages, soft drinks, malt liquors
- [ ] Distilled and rectified alcohol, liquors, beverages
- [ ] Tobacco products

Textiles:
- [ ] Cotton goods—cloth, yarn, clothing, etc.
- [ ] Woolen and worsted goods—cloth, yarn, etc., and clothing manufactured
- [ ] Silk and silk goods—cloth, yarn, clothing, etc.
- [ ] Knit goods—hosiery, underwear, etc.
- [ ] Other textiles—carpets, rugs, etc., and clothing manufactured
- [ ] Clothing, wearing apparel and accessories, except knit goods, boots, shoes, etc.
- [ ] Millinery and lace goods
- [ ] Shoes, rubbers, and other footwear

Lumber and timber products:
- [ ] Logging, sawmills, planing mills, etc.
- [ ] Furniture and cabinet work
- [ ] Boxes, baskets, and other products of wood, veneers, excelsior, etc.
- [ ] Furniture, refrigerators, and other products of wood and metal combined
- [ ] Pulp, paper, and paper products
- [ ] Printing, publishing, and allied industries
- [ ] Furniture and fixtures manufactured and sold by establishments not manufacturing the materials used
- [ ] Leather and leather products
- [ ] Rubber, gutta percha, and balata products
- [ ] Stone, clay, and glass products
- [ ] Metals and metal products other than machinery, vehicles, and shipbuilding
- [ ] Machinery, not including transportation equipment
- [ ] Vehicles for land transportation
- [ ] Railroad equipment
- [ ] Shipbuilding
- [ ] Other manufactures

MANUFACTURING—(Continued)

Mixed products and processes—(Continued)
- [ ] Manufacturers' agents, brokers, commission merchants, and others engaged in buying and selling goods, chattels, or merchandise, but not handling the same
- [ ] Machinery—agricultural and equipment
- [ ] Machinery—electrical and equipment
- [ ] Machinery—other, including prime movers, and machine tools, and machinery and equipment, not elsewhere classified, and machines, not elsewhere classified, and other equipment
- [ ] Metal building materials and equipment
- [ ] Hardware, tools, etc.
- [ ] Producers, owners, producers and processors
- [ ] Other owners, producers and processors

Miscellaneous manufacturing:
- [ ] Brushes, manufacture of parts
- [ ] Musical, professional, and scientific instruments, optical goods, watches and clocks
- [ ] Notions, sundries, ornaments, novelties

NONMANUFACTURING

Trade:
- [ ] Wholesale
- [ ] Retail
- [ ] Wholesale and retail
- [ ] Commission
- [ ] Other trade—except service, garages, filling stations

Finance:
- [ ] Banking, brokerage, discount, investment, and other financial business
- [ ] Insurance companies and agencies
- [ ] Other finance—real estate companies, building and loan associations, etc., banks, exchanges, or boards of trade, stock brokers
- [ ] Operators and lessors of buildings, including apartments, flats, and dwellings, except those owned by the occupants
- [ ] Owners and operators, not selling gas and oil wells, of mineral properties
- [ ] Transportation, transportation by water, express companies, railroads, telegraph and telephone companies, and other public utilities
- [ ] Other transportation—trucking, cartage, storage, and other transportation not elsewhere classified
- [ ] Public utilities—owners and operators of light or power, gas or water plants, electric railways, telephone, telegraph, and other public utilities
- [ ] Amusements—theaters, moving pictures, operas, concerts, and other amusements
- [ ] Service—professional, business, educational, domestic, and all other

AFFILIATIONS WITH OTHER CORPORATIONS (See Instruction 12)

4. Is this a consolidated return? No. If so, answer from the officer of thereto for your district Form 851, Affiliations Schedule, which must be filed by, sworn to, and form a part of this return.

5. Was the income of this corporation included in a consolidated return by any other year? ——— If so, give name and address of corporation which filed the consolidated return, and state fully your relation with such a return was filed ———

PERSONAL SERVICE INCOME

6. Did the corporation file a return under the excess taxes for the preceding taxable year? Yes. Was the corporation in any way an assignment, merger, consolidation, or reorganization of a business or Delaware in existence during this or any prior year since December 31, 1917 Yes. If answer is "yes", give name and address of such predecessor business, and the date of the change in ———

Reorganization General Securities Co.
October 10, 1924

Upon such change were any assets without equivalent or increase? No
If the answer is "yes", showing balance sheets of the business and accounting balance sheets of such business should be furnished.

BASIS OF RETURN

8. Is this return made on the basis of cash receipts and disbursements? Yes
If not, describe fully what other basis or combined was used in computing net income ———

VALUATION OF INVENTORIES

9. State whether the corporation at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state what used and the date inventory was last computed with such ———

PREPARATION OF RETURN (See "Signature and Verification", page 4)

1. Did any person or persons advise the corporation in regard to any questions or matters affecting any item or schedule of this return, or assist or advise the corporation in the preparation of this return, or actually prepare this return for the corporation? Yes. If so, give the name and address of such person or persons and state the nature and extent of the advice given or service rendered and the items and schedules in respect of which the assistance or advice was rendered, if this return was actually prepared by any person or persons other than the corporation, state the name of the individual employed in this return and the manner in which it was furnished to or obtained by such person or persons ———

D. F. Counts Dexter, Colo.

LIST OF ATTACHED STATEMENTS

2. Enter below a list of all schedules (other than those called for by this return, giving the mark used and the schedule number). The name and address of the corporation should be placed on each separate schedule accompanying the return.

Dividends Received
Capital Gains & Losses
Other Deductions

Form of Return. SCHEDULE I—BALANCE SHEETS (See Instruction 42)

Item	Beginning of Taxation Year — Amount	Beginning of Taxation Year — Total	End of Taxable Year — Amount	End of Taxable Year — Total
ASSETS				
1. Cash				
(a) Demand deposits, including drafts	$ 72 727 60		$ 815 45	
(b) Time deposits, including certificates of deposit				
(c) All other cash		$ 72 727 60		$ 815 45
2. Notes receivable				
3. Accounts receivable	$		$	
3a. Less reserve for bad debts				
4. Inventories				
(a) Raw materials	$		$	
(b) Work in process				
(c) Finished goods				
(d) Supplies				
5. Investments (marketable)				
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$		$	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended				
(c) Liberty 3½% Bonds and other obligations of United States issued on or before December 1, 1917				
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness				
(e) Liberty 4% and 4½% Bonds, United States Savings Bonds, and Treasury Bonds				
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in line (b) above)	$		75 429 88	75 429 88
6. Other investments				
(a) Stocks of domestic corporations	$ 2 800 031 17		$ 2 681 155 33	
(b) Bonds of domestic corporations	75 436 51		108 361 09	
(c) Stocks and bonds of foreign corporations				
(d) All other investments or loans		$ 2 875 467 68		$ 789 484 42
7. Deferred charges				
(a) Prepaid insurance	$		$	
(b) Prepaid taxes				
(c) All other				
8. Capital assets				
(a) Buildings	$		$	
(b) Machinery and equipment				
(c) Furniture and fixtures				
(d) Delivery equipment				
(e) Other depreciable assets				
(f) Totals of Items (a) to (e)	$		$	
(g) Less reserves for depreciation				
(h) Depletable assets	$		$	
(i) Less reserves for depletion				
(j) Land (at cost)				
9. Patents				
10. Good will				
11. Other assets (describe fully):	$		$	
12. Total Assets	$	$ 3 748 195 16	$	$ 3 871 829 54
LIABILITIES				
13. Notes payable (less than 1 year)	$		$	
14. Accounts payable		37 200 00		
15. Bonds and notes (not secured by mortgage)				
16. Mortgages (including bonds and notes so secured)				
17. Accrued expenses:				
(a) Interest	$		$	
(b) Taxes Excess Profits			1 982 99	1 982 99
(c) All other				
18. Other liabilities (describe fully):	$		$	
19. Capital stock:				
(a) Preferred stock (less stock in treasury)	$		$ 1300 000 00	
(b) Common stock (less stock in treasury)	930 000 00	930 000 00	868 200 00	1 168 100 00
20. Surplus Paid In	$ 1 718 207 44		$ 1 440 107 49	
21. Undivided profits	82 787 89	1 790 995 18	221 659 08	1 661 766 57
22. Total Liabilities		$ 3 748 195 16		$ 3 871 829 54

Remarks

Page 4 of Return — SCHEDULE M—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. [illegible]	[illegible]	[illegible] 40	15. [illegible]			
2. [illegible]	715	06	(a) [illegible]			
3. [illegible]	739 [illegible]	42	(b) [illegible]		1 428	36
4. [illegible]			(c) [illegible]			
(a)(1) [illegible]	229	19	(d) [illegible]			
(2) [illegible]			(e) [illegible]			
(3) [illegible]			(f) [illegible]			
(4) [illegible]			(g) [illegible]			
(5) [illegible]	51	00	(h) [illegible]			
(6) [illegible]	715	06	(i) [illegible]			
(7) [illegible]			(j) [illegible]			
(b) [illegible]			(k) [illegible]			
(c) [illegible]			(l) [illegible]			
5. [illegible]			(m) [illegible]			
6. [illegible]						
7. Total of Lines 3 to 6, inclusive	739 158	73	16. Total of Line 15		1 428	36
8. Total from Line 16	1 428	36	17. Dividends paid during the taxable year [illegible]			
9. [illegible]	737 724	38	(a) Date paid 7/6/36 [illegible] Cash		65 100	00
10. [illegible]	62 787	69	(b) Date paid 10/1/36 [illegible] Cash		5 098	80
11. [illegible]			(c) Date paid 12/20/36 [illegible] Cash		5 098	80
(a)			(d) Date paid 12/30/36 [illegible] Cash		505 556	00
(b)			18. [illegible]			
12. Total of Lines 9 to 11, inclusive	800 511	08	(a)			
13. Total from Line 19	578 855	00	(b)			
14. [illegible]	221 [illegible]	08	19. Total of Lines 17 and 18		578 855	00

LIABILITY FOR FILING RETURNS

Corporations generally.—Every domestic or resident corporation, joint-stock company, association, or insurance company (other than a life insurance company) not specifically excepted by Section 101 of the Revenue Act of 1936, whether or not having any net income, must make a return of income on this form. [illegible]

[illegible]

TIME AND PLACE FOR FILING

[illegible]

located. In the case of a foreign corporation having an office or place of business in the United States the return shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year. Where a consolidated income tax return is filed by an affiliated group of railroad corporations, the separate excess-profits tax returns of the common parent corporation and each subsidiary corporation must be filed with the collector with whom the consolidated income tax return is filed.

The collector of internal revenue may grant a reasonable extension of time for filing a return, not to exceed six months, if application therefor is made before the date prescribed by law for filing such return, whenever in his judgment good cause exists.

SIGNATURES AND VERIFICATION

The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. Receivers, trustees in bankruptcy, and assignees, operating the property or business of corporations, must make returns of income for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, and disposing of its assets for purposes of liquidation.

Question 7 on page 4 of the return should be answered fully, and where the return is actually prepared by some person or persons other than the corporation, such person or persons must execute the affidavit at the foot of this page.

PAYMENT OF TAX

Checks or money orders in payment of tax should be drawn to the order of "Collector of Internal Revenue at (insert name of city and State)." Do not send cash by mail, nor pay it in person except at the collector's office.

The tax may be paid when the return is filed, or in four equal installments, as follows: The first installment shall be paid on or before the fifteenth day of the third month following the close of the taxable year, the second installment shall be paid on or before the fifteenth day of the third month, the third installment on or before the fifteenth day of the sixth month, and the fourth installment on or before the fifteenth day of the ninth month, after the date prescribed for paying the first installment.

If any installment is not paid on the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand by the collector.

PENALTIES

For willful failure to make and file return on time.—Not more than $10,000 or imprisonment for not more than one year, or both, together with the costs of prosecution, and in addition 5 percent to 25 percent of the amount of the tax.

For willfully attempting to evade or defeat payment of the tax.—Not more than $10,000 or imprisonment for not more than five years, or both, together with the costs of prosecution.

For deficiency due to negligence or fraud.—Five percent of the amount of the deficiency if due to negligence or intentional disregard of rules and regulations without intent to defraud, or 50 percent of the amount of the deficiency if due to fraud.

AFFIDAVIT (See "Signatures and Verification", above)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation [illegible] the Revenue Act of 1936, [illegible]

Subscribed and sworn to before me this 15th day of March, 1937.

Louis E. Brown — Robert Curtis — [illegible] Pres.

[illegible] Asst. Sec.

AFFIDAVIT (See "Signatures and Verification", above)

[illegible]

Subscribed and sworn to before me this 15th day of March, 1937.

Dexley F. [illegible]

Louis E. Brown

Cement Investors, Inc.
Dividends Received.
1936.

Name	Amount
Alpha Portland Cement Company	67,485.00
Ideal Cement	465,790.75
Lehigh Portland Cement Co. "Pfd."	1,150.00
Lehigh Portland Cement Co. "Com."	400.00
Lone Star Cement Company "Common"	764.60
Missouri Portland Cement	1,680.00
Oregon Portland Cement 7% 1st Pfd.	2,842.00
Oregon Portland Cement 7% Conv. Pfd.	351.00
Southwestern Portland Cement Co. "Pfd."	36,046.65
Southwestern Portland Cement Co. "Com."	138,779.63
International Cement Co.	75.00
	715,364.63

Cement Investors, Inc.
Capital Gains and Losses

	Cost	Sold For	Profit or Loss
Ideal Cement Co. 15 Year 5% Debentures acquired 10/10/34—called 1/21/36	19,029.69	41,004.00	21,974.31
International Cement 20 Year 5% Debentures—acquired 10/10/34—called 1/14/36	13,978.75	25,812.50	11,833.75
United States Treasury Bonds 1½% due 3/15/39 acquired 2/25/36—Sold 7/16/36	25,382.81	25,289.06	(93.75)
Totals	58,391.25	92,105.56	33,714.31

Other Deductions.

Insurance & Postage	22.07
Traveling Expense	2,378.50
Stationery and Office Expense	22.66
Filing Fee (State Report)	2.00
Statutory Representation—Delaware	50.00
Total	2,475.23

Form 1120—Schedule N
Treasury Department
Internal Revenue Service

Analysis of Dividends Paid and Receipts and Expenditures on Account of Changes in Corporation's Obligations and Capital Stock

For Calendar Year 1936

Or fiscal year begun ....., 1936, and ended ....., 1937

This schedule together with green copy marked "Duplicate", must be filed with and as part of the corporation income and excess-profits tax return for the taxable year.	Print plainly corporation's name and business address Cement Investors, Inc. (Name) 104 Boston Building (Street and number) Denver, Colorado (Post office) (County) (State)	(Date received)

List below all dividends paid during the taxable year, stating in each case the character of the dividend and entering the amounts in the proper columns respecting the taxable status of the dividends. If the total amount shown below differs from that reported in Schedule M, item 17, explain the difference at the end of this schedule. Dividends paid in treasury stock should be entered in item 2 and not in items 5 through 8. It is essential that dividends in which the medium of payment is elected by the shareholders be carefully reported in item 9, and correspondingly excluded from items 1 through 8.

Item No.	Character of Dividend	Taxable Dividends (1)	Nontaxable Dividends (2)	Total (3)
1.	Cash	$ 578 853 00	$	$ 578 853 00
2.	Treasury stock			
3.	Assets other than money or the corporation's own securities (Explain character of each payment; use separate schedule if necessary.)			
4.	Obligations of the corporation (bonds, notes, scrip, etc.)			
5.	Common stock of the corporation to holders of preferred* stock			
6.	Preferred* stock of the corporation to holders of preferred* stock			
7.	Preferred* stock of the corporation to holders of common stock			
8.	Common stock of the corporation to holders of common stock			
9.	Optional—Medium of payment elected by the shareholders. (List below separately the amounts disbursed in each medium of payment):			
	Cash			
	Common stock			
	Other (specify character)			
10.	Total (items 1 to 9)	$ 578 853 00	$	$ 578 853 00
11.	Dividends paid credit (item 29, page 1 of return)	578 853 00		578 853 00
12.	Dividends carry-over (item 10 minus item 11)			

* Preferred stock for this purpose should be considered as stock which is preferred as to either dividends or assets irrespective of formal designation.

(Continued on reverse side)

Item No.		Interest-bearing obligations with original maturity of 1 year or less	Interest-bearing obligations with original maturity of over 1 year	Preferred* stock	Common stock	Total
13.	Net increase or decrease during taxable year in amount outstanding of corporation's interest-bearing obligations with original maturity of 1 year or less (indicate decrease by minus sign)	$	x x x x x	x x x x	x x x x	$
14.	Net proceeds during taxable year from sale of corporation's own interest-bearing obligations and capital stock (other than obligations with original maturity of 1 year or less)	x x x x x	$	$	$	
15.	Net amounts expended during taxable year for retirement of corporation's own interest-bearing obligations and capital stock (other than obligations with original maturity of 1 year or less)	x x x x x				
16.	Net increase or decrease (sum of items 13 and 14 less item 15)					

* Preferred stock for this purpose should be considered as stock which is preferred as to either dividends or assets irrespective of formal designation.

Exhibit "B" 57

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RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

RETURN OF PERSONAL HOLDING COMPANY

SUBJECT TO SURTAX UNDER SECTION 351 OF THE REVENUE ACT OF 1936

For Calendar Year 1936

65

881213

Colo.

CHERRY INVESTORS, INC.

104 BOSTON BUILDING

DENVER, COLORADO

ADJUSTED NET INCOME (See Instruction 4)

1. Net income (or deficit) subject to Title I of the Revenue Act of 1936		$ 739 813 68
2. Dividends on stock of domestic corporations subject to taxation under Title I of the Revenue Act of 1936 (See Schedule A)		
3. TOTAL (or items 1 and 2)		$ 739 813 68
4. Less: Federal income, war-profits, and excess-profits taxes (See Schedule B)	$ 31 654 97	
5. Contributions or gifts (not deductible in computing item 1) (See Schedule C)		
6. Losses from sale or exchange of capital assets disallowed by section 117(d) of the Revenue Act of 1936		
7. Income (not paid to a foreign country or U. S. possession and) not subject to deduction (See Schedule D)		
8. TOTAL OF ITEMS 4 TO 7		$ 31 654 97
9. ADJUSTED NET INCOME (Item 3 minus item 8)		$ 707 158 71

UNDISTRIBUTED ADJUSTED NET INCOME (See Instruction 10)

10. Adjusted net income (item 9 above) (See Schedule E)	$ 707 158 71	$ 707 158 71
11. Less: Dividends from personal holding companies (See Schedule A, column 5)		
12. Balance (item 10, column 1, minus item 11)	$ 707 158 71	
13. 90% of Item 12	$ 636 442 84	
14. Amount used or set aside to retire indebtedness (See Schedule D) (See Instruction 6)		
15. Dividends paid during year	638 843 00	
16. TOTAL OF ITEMS 13 TO 15		720 284 72
17. UNDISTRIBUTED ADJUSTED NET INCOME (Item 10, column 1, minus item 16)		None

COMPUTATION OF TAX (See Instruction 7)

18. Undistributed adjusted net income (Item 17 above)	
19. Amount taxable at rate of 10%, (10% of item 18)	
20. Amount taxable at rate of 15%, (15% of entire item 18)	
21. Surtax on Item 19 (10% of Item 18)	
22. Surtax on Item 20 (15% of Item 18)	
23. TOTAL SURTAX (Item 21 plus Item 22)	None

AFFIDAVIT (See Instruction 8)

I, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including the accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1936 and the Regulations issued thereunder.

W. W. Walker
President

W. W. Tarrant
Asst. Secretary

Before me and subscribed before me this 17th day of March, 1937

Louise O. Brown
Notary Public

(SEAL)

(SEAL)

Before me and subscribed before me this 17th day of March, 1937

Louise O. Brown
Notary Public

(SEAL)

Oakley F. Corwin

SCHEDULE A—Dividends (From Domestic Corporations Subject to Taxation Under Title I of the Revenue Act of 1936) 63

1. Name and Address of Domestic Corporation	2. Dividends from Personal Holding Companies	3. Dividends from Corporations under Title I of the Revenue Act of 1936
	$	$
Totals		
Total of Columns 2 and 3 (enter on Page 2)		$

SCHEDULE B—Federal Income, War-profits, and Excess-profits Taxes

Number below all Federal income, war-profits, and excess-profits taxes paid or accrued during the year, stating the amount and year for which paid or accrued

$

SCHEDULE C—Statement of Contributions (See Instruction 8)

Name of Organization	Amount Paid	Name of Organization	Amount Paid
	$		$
Total Contributions (enter on line 6)			$

SCHEDULE D—Payment of Bonus on Pro Rata Shares (See Instruction 12)
(Fill in only if section 302(d) of the Revenue Act of 1936 applies)

Name and Address of Each Shareholder	Class of Stock and Number of Shares Held	Amount Subject to Bonus Distribution
		$
Total		$

SCHEDULE E—Deductions Claimed for Amounts Used or Set Aside to Retire Indebtedness Incurred Prior to January 1, 1934

1. Description	2. Date amount was Authorized	3. Date Bonds are Payable (Mo. Day Yr.)	4. Amount of Bonds Outstanding Jan. 1, 1934	5. Amount set aside to Retire Bonds Prior to Jan. 1, 1934	6. Amount set aside during Taxable Year	7. Balance	8. Amount of Bonds Retired during Taxable Year	9. Total Amount set aside to date of Return
			$	$	$	$	$	$

A complete statement setting forth the information required by Instruction 8 must be given below. (Attach additional sheets, if necessary.)

Exhibit D

In the
District Court of the United States
For the District of Colorado.

In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors.	In Proceedings for Reorganization Consolidated Cause No. 8081

Plan of Reorganization
of
The Colorado Fuel and Iron Company
(and The Colorado Industrial Company)

Dated March 1, 1935

Proposed by The Colorado Fuel and Iron Company and The Colorado Industrial Company pursuant to Section 77B of the Bankruptcy Act

The statements, opinions, computations, estimates, conclusions, etc., contained in the Introductory Statement, the Plan and the Exhibits to the Plan (1) are submitted by The Colorado Fuel and Iron Company and are not made by or joined in by the Trustee or by any of the Committees or by the Reorganization Managers; (2) are made solely for the purpose of assisting the Court (after hearing) in the reorganization proceedings, and creditors, stockholders and other parties in interest, in making a determination as to the fairness of the Plan; and (3) are not intended for the use or information of prospective purchasers of any securities referred to in the Plan, whether now existing or proposed to be issued, or for any purpose other than the purpose stated in (2); and no one is authorized to make any statement regarding the Plan, whether with reference to any securities referred to therein or otherwise which is not set forth herein.

Protective Committee

The Colorado Industrial Company

First mortgage five per cent. thirty year gold bonds.

Guaranteed by
The Colorado Fuel and Iron Company

Carl J. Schmidlapp, Chairman
Bertram Cutler
John Evans
Frank Miller Gould
R. G. Page
John D. Rockefeller, 3rd
Protective Committee

Milbank, Tweed, Hope & Webb,
15 Broad Street, New York, N. Y., Counsel
W. Rice Brewster, Secretary,
15 Broad Street, New York, N. Y.

March 6, 1935.

To holders of the above Bonds:

This Committee has given careful consideration to the Plan of Reorganization dated March 1, 1935 which has been formulated by Messrs. J. & W. Seligman & Co. pursuant to the request of this Committee and the Committee for the General Mortgage 5% Bonds of The Colorado Fuel and Iron Company. From our study of the history and present condition of the affairs of The Colorado Fuel and Iron Company, it is apparent that the present position of the Company necessitates a radical readjustment of its capital structure and consequent alteration of the character of securities to be taken by the Industrial Bondholders in the reorganized company. The Plan itself states the principles upon which its provisions are based and the reasons for the treatment accorded to the various classes of securities. We concur in these principles and we believe that a sound readjustment can be effectively accomplished under the Plan proposed, upon a basis which we consider fair to the Industrial Bondholders.

Accordingly this Committee has approved the Plan and recommends its acceptance by the holders of the Industrial Bonds.

Carl J. Schmidlapp, Chairman.

Protective Committee
The Colorado Fuel and Iron Company
Preferred Stock and Common Stock

Committee	Secretary
Grayson M.-P. Murphy, Chairman	Tristan Antell
John W. Hanes	52 Broadway, New York
Andrew V. Stout	Counsel
T. Johnson Ward	Cotton, Franklin, Wright & Gordon
	63 Wall Street, New York

March 6, 1935.

To the holders of Preferred Stock and Common Stock:

This Committee was formed, shortly after the beginning of the receivership, to represent the holders of Preferred and Common Stock of the Company. The serious problems presented by the Company's financial condition have been studied by the Committee, and the Committee has examined reports of engineers and accountants regarding the Company and has conferred with the Receiver and Trustee and the Reorganization Managers named in the annexed Plan of Reorganization.

Operating results of recent years (as shown in the Plan and the financial statements annexed thereto) make it clear that the properties of the Company cannot be expected to support its present debt structure, and that a drastic reduction of fixed charges must be effected. $27,633,000 principal amount of matured bonds are in default and, unless a reorganization satisfactory to the bondholders can be carried out with reasonable promptness, the stockholders are confronted with the danger of having their interest in the property wiped out entirely.

The study made by the Committee has convinced it that stockholders must be prepared to agree to a plan which gives full recognition to the paramount rights of the bondholders, and, furthermore, that the situation here presented is one which cannot be met by any ordinary readjustment of the capital structure. The Committee believes that to effect a reorganization upon a basis which would leave the stock interests largely undisturbed would require the payment by stockholders of a substantial assessment. In the opinion of the Committee any such assessment would be impracticable under the circumstances and would

impose a severe hardship upon the stockholders. Accordingly, under the proposed Plan no contribution of cash is required of the stockholders. Instead, they are asked to give up their present holdings in exchange for warrants to purchase common stock of the reorganized company at any time prior to February 1, 1950.

While the effect of the Plan is to give the bondholders the entire present ownership and control of the reorganized company, the stockholders will retain, without assessment, an interest in the enterprise to the extent of whatever value the warrants may have, and will be afforded an opportunity, over a long period of time, to reacquire a stock interest at a price which takes into consideration the basis on which stock is now to be accepted by the bondholders.

In the opinion of the Committee the proposed Plan presents a method of reorganizing the Company on a sound basis and gives due regard to the respective rights of bondholders and stockholders. The Committee believes furthermore that the relative treatment accorded by the Plan to the holders of Preferred Stock (which has a preference on earnings and not on assets) and Common Stock is equitable in view of all the circumstances. The Committee therefore recommends immediate acceptance of the Plan by the holders of Preferred Stock and Common Stock.

The Committee is informed that Mr. John D. Rockefeller, Jr., owns substantial amounts of both classes of stock of the Company and also owns or controls a majority of the outstanding "Industrial Bonds" and substantial amounts of the "Fuel Bonds." Mr. Rockefeller has advised the Reorganization Managers that he will accept the Plan with respect to the securities owned and controlled by him.

Grayson M.-P. Murphy, Chairman.

The Colorado Fuel and Iron Company (and The Colorado Industrial Company)

Plan of Reorganization

Dated March 1, 1935

Introductory Statement

Receivership and Reorganization Proceedings

On August 1, 1933, The Colorado Fuel and Iron Company (hereinafter called the Present Company) defaulted in the payment of the semi-annual interest due on $32,179,000 principal amount of bonds then outstanding in the hands of the public. On the same day, a receiver for the properties of the Present Company was appointed by the United States District Courts for the Districts of Colorado and Wyoming. This default followed large operating deficits during the preceding two and one-half years.

On August 1, 1934, $27,633,000 principal amount of The Colorado Industrial Company First Mortgage 5% Bonds, which are unconditionally guaranteed by the Present Company, matured by their terms and the Present Company was unable to provide for the payment of such bonds. On the same day, the Present Company filed a petition for reorganization in the United States District Court for the District of Colorado under Section 77B of the Bankruptcy Act. Contemporaneously therewith, The Colorado Industrial Company (a wholly-owned subsidiary of the Present Company which at the present time has no assets of any substantial value, having conveyed all of its properties in 1913 to the Present Company) filed its petition under said Section 77B. Mr. Arthur Roeder, President of the Present Company, who had been acting as Receiver, was appointed Trustee of the Present Company's estate (and of The Colorado Industrial Company's estate) in the reorganization proceedings and has been conducting the business under orders of the Court.

Committees and Reorganization Managers

Following the receivership of the Present Company on August 1, 1933, the following committees were constituted for the purpose of representing bondholders and stockholders of the Present Company:

Committee (hereinafter called the Fuel Committee) for The Colorado Fuel and Iron Company General Mortgage 5% Bonds (hereinafter called the Fuel Bonds)

Thatcher M. Brown, Chairman
Harold Kountze
James B. Mabon
John C. Traphagen

James D. Flaherty,
Secretary,
63 Wall Street,
New York, N. Y.

Committee (hereinafter called the Industrial Committee) for The Colorado Industrial Company First Mortgage 5% Bonds (hereinafter called the Industrial Bonds)

Carl J. Schmidlapp, Chairman
Bertram Cutler
John Evans
Frank Miller Gould
R. G. Page
John D. Rockefeller 3rd

W. Rice Brewster,
Secretary,
15 Broad Street,
New York, N. Y.

Committee (hereinafter called the Stockholders Committee) for The Colorado Fuel and Iron Company Preferred and Common Stock

Grayson M.-P Murphy, Chairman
John W. Hanes
Andrew V. Stout
T. Johnson Ward

Tristan Antell,
Secretary,
52 Broadway,
New York, N. Y.

As stated below, the Reorganization Managers under the Plan of Reorganization hereinafter set forth will be:

Messrs. J. & W. Seligman & Co.,
54 Wall Street,
New York, N. Y.

Formulation and Proposal of Plan

In August 1933, the Fuel Committee and the Industrial Committee requested Messrs. J. & W. Seligman & Co. to formulate and submit to said Committees a plan for the reorganization of the Present Company which would be fair to all interests. In accordance with such request, Messrs. J. & W. Seligman & Co. made a study of the past and current operating results and present financial position of the enterprise and of its probable future requirements consulting in that connection with Mr. Arthur Roeder as Receiver and subsequently as Trustee, and with Messrs. Coverdale & Colpitts who were requested by the two Bondholders Committees to make a comparative study of the properties subject to the respective mortgages securing the Industrial Bonds and Fuel Bonds for the purpose of determining the relative position of these two issues in any reorganization, and a survey of the future capital requirements of the business. Following extended discussions with the two Bondholders Committees and the Stockholders Committee, Messrs. J. & W. Seligman & Co. formulated the Plan of Reorganization hereinafter set forth which in their opinion is fair to all interests and under which they are to act as Reorganization Managers on behalf of all classes of security holders. This Plan has been approved by both Bondholders Committees and the Stockholders Committee. The Industrial Committee and the Stockholders Committee, as set forth in letters prefixed hereto, recommend the acceptance of the Plan by the holders of the securities affected by the Plan. As the Fuel Bonds are to remain undisturbed in the reorganization, no action by the holders of such Bonds is required.

The Plan is proposed by the Present Company and The Colorado Industrial Company pursuant to Section 77B of the Bankruptcy Act.

Position of the Present Company

The Present Company (including its subsidiary companies) is engaged in the manufacture of steel products and the mining and sale of coal. It has large reserves of ore, coal and most of the raw materials required in the manufacture of steel, all of which can be delivered at its plant at relatively satisfactory costs. The Plant of the Present Company, located at Pueblo, Colorado,

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has, by reason of its location, certain natural distributing advantages over a considerable territory.

Primarily the Present Company is a manufacturer of steel rails and accessories, from 50 to 70 per cent. of its total steel tonnage being normally derived from this source. The Present Company, accordingly, has been adversely affected during the past four years, not only by the heavy decline in all steel demand, but particularly by the very drastic curtailment of rail purchases by the railroads. Total production of steel rails in the United States, as reported by the Amrican Iron and Steel Institute, averaged 2,647,000 tons a year for the period 1920-1929. For the year 1930, such production was 1,873,233 tons, for 1931 1,157,751 tons, for 1932 402,566 tons, and for 1933 416,296 tons. Production for 1934, according to the preliminary figures, was in excess of 1,004,000 tons.

There is attached hereto as Exhibit A (page 11) a consolidated statement of profit and loss and surplus of the Present Company and subsidiaries for the calendar years 1926 to 1934, inclusive, with accompanying notes, which has been prepared from the published annual reports of the Present Company for the years 1926 to 1932 (for which years the consolidated accounts were certified by Messrs. Price, Waterhouse & Co.) and from information furnished by the Trustee for the years 1933 and 1934. There is attached hereto as Exhibit B (page 12) a consolidated balance sheet as of December 31, 1934, of the Present Company and subsidiaries, prepared by the Trustee.

As shown by Exhibit A, to which reference should be made for further details and explanatory notes, the earnings of the Present Company (and of the Receiver and of the Trustee) after depreciation and depletion, but before interest,* Federal income taxes and surplus adjustments, for the years 1926 to 1934, were as follows:

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*Annual interest charges on the funded debt outstanding on December 31, 1934 were $1,606,650.

	Earnings (Before interest, Federal income taxes, and surplus adjustments)
1926—	$4,932,706.28
1927—	4,588,301.16
1928—	2,757,470.24
1929—	4,248,095.96
1930—	1,959,043.54
1931—	*1,710,178.68* (loss)
1932—	*2,629,892.57* (loss)
1933—	*1,424,287.47* (loss)
1934—	*15,024.20* (loss)

Object of Plan

The operating results of recent years, and the uncertainty as to future rail purchases by the railroads on which so much of the Present Company's business depends, indicate clearly that any plan of reorganization must have as its primary objective a drastic reduction in annual fixed charges.

The Plan of Reorganization hereinafter set forth is designed to achieve this object.

Under this Plan, the *fixed* interest charges are reduced from approximately $1,600,000 annually to $225,000, representing the annual interest on $4,500,000 of Fuel Bonds. These bonds are a first lien on certain important sections of the property essential to the operation of the enterprise as an integrated steel plant. By order of the Court, all arrears of interest on the Fuel Bonds have been paid and interest thereon is being currently paid. These bonds are to remain undisturbed and are to be assumed by the New Company.

The remaining $27,633,000 of funded debt, represented by the Industrial Bonds, is to be replaced in part by $11,053,200 of new 5% Income Mortgage Bonds due in 1970 and in part by common stock. These new Income Mortgage Bonds will bear no interest prior to April 1, 1936. Interest for each of the years ending March 31, 1937 and March 31, 1938 will be payable only to the extent earned in the preceding calendar year and only as and when declared by the Board of Directors in its discretion, but to the extent so earned such interest will be cumulative; interest

from April 1, 1938 will be fully cumulative at the rate of 5% per annum, and will be required to be paid to the extent earned, subject to provisions designed to protect the working capital of the New Company. All unpaid cumulative interest will be payable in any event at the maturity of the bonds. Accordingly, the present fixed charges of approximately $1,382,000 annually on the existing Industrial Bonds will be replaced by contingent charges, payable only out of earnings as provided in the Plan of a maximum annual amount of approximately $553,000.

Treatment of Security Holders

With the fixed interest charges drastically reduced, and the interest on the new Income Mortgage Bonds being deferred until April 1, 1936, and payment of interest thereafter being contingent on earnings, it is felt that existing working capital will be sufficient without calling on the stockholders for an assessment to provide additional funds. A present assessment under existing circumstances in many cases would impose a severe hardship on the stockholders, and might in some cases result in wiping out their interest in the property.

Under the Plan, the Industrial Bondholders are to receive for each $1,000 principal amount of Bonds (together with the unpaid interest thereon which amounted to 10% to February 1, 1935): (a) $400 principal amount of new 5% Income Mortgage Bonds and (b) 20 shares of new Common Stock. The Industrial Bondholders are to receive all of the new Income Mortgage Bonds and all of the new Common Stock of the new Company to be presently issued in the reorganization. The entire issue of Industrial Bonds outstanding in the aggregate principal amount of $27,633,000 is in default. Interest on the Industrial Bonds accrued and unpaid to February 1, 1935 amounts to $2,763,300. Accordingly, in the first instance, the Plan gives to the holders of the Industrial Bonds the entire ownership and control of the New Company, subject to $4,500,000 of Fuel Bonds which are undisturbed in the reorganization.

The Plan, however, does not in its effect on stockholders operate as a strict foreclosure, since the stockholders are to receive Warrants entitling them at their option to purchase, at any time until February 1, 1950, a stock equity in the New Company at $35 per share. The price at which stockholders, under the terms of such Warrants, may regain an equity position in the enter-

prise, takes into consideration the basis upon which the Industrial Bondholders are to receive shares in the new Common Stock in exchange for that part of their debt not covered by new Income Mortgage Bonds.

In the relative treatment of the Preferred and Common Stockholders, recognition has been given to the fact that, while the Preferred Stock (of which only 20,000 shares are outstanding) has a cumulative priority over the Common Stock in the distribution of earnings, it has no priority in distribution of assets on liquidation. The Preferred Stockholders, therefore, are accorded the right to purchase for each share of present Preferred Stock held a substantially larger proportion of the equity of the New Company than the Common Stockholders.

Under the Plan, Preferred Stockholders are to receive, for each share of Preferred Stock, Warrants to purchase 3 shares of new Common Stock, and Common Stockholders are to receive, for each share of present Common Stock, Warrants to purchase ¾ of a share of new Common Stock.

Although the number of shares of Common Stock of the New Company will be greater than the number of shares of the present Common Stock now outstanding, the amount of senior securities will be materially reduced. As indicated above, the total interest charges, both fixed and contingent, ranking ahead of the new Common Stock will be less than half the present fixed interest charges, and, moreover, there will be no preferred stock. In addition, all cash proceeds of the exercise of Warrants are dedicated to the retirement of Income Mortgage Bonds, and Income Mortgage Bonds may be tendered at their principal amount in payment of the warrant subscription price. Accordingly it may be expected that, when all the Warrants to be issued under the Plan are exercised, practically the entire issue of Income Mortgage Bonds will be retired.

Provision for Future Financial Requirements

A sound plan of reorganization must provide a financing medium for the possible future financial requirements of the New Company. In this connection, it must be recognized that many of the operating properties of the Present Company, although capable of economic operation, are old, and consideration must be given to the possible necessity of modernizing equip-

ment, as well as to the possible need for more working capital at some time in the future.

To provide a financing medium for such requirements, the Plan provides for the creation at some future time by the New Company of an issue of First and Refunding Mortgage Bonds, which will rank ahead of the Income Mortgage Bonds. These First and Refunding Mortgage Bonds may be authorized in a maximum amount not exceeding $15,000,000, of which $4,500,000, or such lesser amount as shall be required for the purpose, will be reserved to acquire or refund the Fuel Bonds. The balance may be issued, when authorized by the vote of two-thirds in number of the entire Board of Directors, for such purposes and under such restrictions as may be expressed in the First and Refunding Mortgage. *It is not proposed to issue any First and Refunding Mortgage Bonds in the reorganization.*

Effect of Plan

The effect of the Plan is:

First: To strengthen the capital structure of the enterprise, through the drastic reduction of fixed charges and the provision of a financing medium for future financial requirements.

Second: To give full recognition to the paramount rights of the bondholders.

Third: To enable the stockholders to regain an interest in the enterprise upon a basis which takes account of the present junior rank of the stockholders and of the relative rights and priorities of the two classes of stock.

The plan will be consummated only in accordance with the provisions of Section 77B of the Bankruptcy Act. The new securities provided for in the Plan will be issued only when the Plan has been confirmed by the United States District Court for the District of Colorado in accordance with the provisions of said Section. The Plan will not be carried out unless and until it has been accepted by or on behalf of the holders of two-thirds in amount of the Industrial Bonds and the holders of a majority of the Preferred Stock and a majority of the Common Stock of the Present Company.

Plan

I. Capitalization (as of March 1, 1935) of Present Company

The Colorado Fuel and Iron Company General Mortgage 5% Bonds, due February 1, 1943 (hereinafter called the Fuel Bonds)	$4,500,000[1]
The Colorado Industrial Company First Mortgage 5% Bonds, due August 1, 1934 (hereinafter called the Industrial Bonds)	27,633,000[2]
8% Cumulative Preferred Stock ($100 par value)	20,000 shares[3]
Common Stock (without par value)	340,505 shares

II. Securities Affected by the Plan

The following securities of the Present Company are affected by the Plan:

Industrial Bonds;
8% Cumulative Preferred Stock;
Common Stock.

The following securities and claims are *not* affected by the Plan:

Fuel Bonds which are to be assumed by the New Company as stated in paragraph 1 of Article IV below;
The various claims referred to in paragraph 2 of Article IV below.

III. Capitalization of New Company

A new corporation (hereinafter called the New Company) is to be organized under the laws of such State as may be determined as hereinafter in Article IX provided to acquire directly or otherwise all of the assets of the Present Company and the In-

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[1] Exclusive of $599,000 of Fuel Bonds deposited with the Industrial Commission of Colorado to secure payments under the Workmen's Compensation Act. The amount of Fuel Bonds outstanding is subject to reduction through the operation of the sinking fund for such bonds.

[2] Exclusive of $7,741,000 of Industrial Bonds owned by the Present Company.

[3] Dividends have not been paid since November 25, 1931. The Preferred Stock is entitled to cumulative dividends at the rate of 8% per annum and no more payable out of the net earnings before any dividends are paid on the Common Stock, but ranks equally with the Common Stock in the distribution of assets on liquidation.

dustrial Company, as the same shall exist upon the consummation of the Plan and subject to such changes therein in the meantime as shall result from the ordinary conduct of the business by the Trustee or as shall be authorized by the Court, subject, however, (but only in so far as the same attaches thereto) to the lien of the Present Company's General Mortgage dated February 1, 1893, and the supplements thereto, securing the Fuel Bonds. The New Company will have the following capitalization:

Fuel Bonds (undisturbed in the reorganization)	$ 4,500,000[1]
Income Mortgage Bonds	11,053,200[4]
Common Stock (1,000,000 shares authorized)	552,660 shares[5]
Warrants to purchase Common Stock	315,379 shares

IV. Treatment of Existing Debt and Stocks Under Plan[6]

1. Fuel Bonds

The Fuel Bonds are not affected by the Plan. They are to remain undisturbed in the reorganization and are to be assumed by the New Company. The interest on the Fuel Bonds maturing August 1, 1933, and February 1, 1934, which was not paid when due, has been subsequently paid by the Receiver pursuant to order of the Court, and pursuant to like order the interest on the Fuel Bonds maturing August 1, 1934 and February 1, 1935, was paid when due. It is contemplated by the Plan that interest on the Fuel Bonds hereafter maturing will be paid by the Trustee until the consummation of the Plan and thereafter by the New Company.

2. Other Claims

The following claims are not affected by the Plan. To the extent that such claims have not been paid by the Receiver or shall

---

[1]Exclusive of $599,000 of Fuel Bonds deposited with the Industrial Commission of Colorado to secure payments under the Workmen's Compensation Act. The amount of Fuel Bonds outstanding is subject to reduction through the operation of the sinking fund for such bonds.

[4]May be subordinated to an issue of First and Refunding Mortgage Bonds hereinafter described.

[5]The new Common Stock will be without par value or have such par value as the Reorganization Managers shall determine as hereinafter in Article IX provided.

[6]The capital stock of the Industrial Company and $7,741,000 principal amount of Industrial Bonds, which are owned by the Present Company, will be cancelled in the reorganization.

not be paid by the Trustee pursuant to order of Court, they are to be paid in cash by the New Company upon the consummation of the Plan or assumed by the New Company:[1]

Any claims of the United States of America or of the State of Colorado[2];

Workmen's Compensation claims;

Obligations of the Receiver and of the Trustee;

Obligations to Subsidiaries;

C rent liabilities incurred in the ordinary conduct of the business of the Present Company prior to receivership[3]; and

Claims, as adjusted or liquidated and allowed by the Court, arising from the disaffirmance of contacts by the Receiver or the Trustee.

All of the known claims against the Present Company arising prior to receivership are included within the categories listed above. Other liabilities, liens or encumbrances, if any, in respect of which claims are hereafter filed or evidenced in accordance with orders of the Court, may be adjusted or compromised and dealt with or paid or discharged by the New Company, or the property may be transferred to the New Company subject to any such liens or encumbrances, all as may be determined in Article IX provided.

3. Industrial Bonds

The holders of Industrial Bonds are to receive for each $1,000 principal amount of Bonds (together with the unpaid interest thereon, which amounted to 10% to February 1, 1935):

(a) $400 principal amount of new 5% Income Mortgage Bonds; and

(b) 20 shares of Common Stock of the New Company.

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[1]There are no known claims against the Industrial Company other than the Industrial Bonds.

[2]Up to December 31, 1934, the United States has asserted a claim for $37,016.85 in respect of additional income taxes for previous years.

[3]The greater part of such claims, so far as known, have been paid by the Receiver pursuant to order of Court and there remain unpaid and to be liquidated known claims asserted up to December 31, 1934 for an aggregate of $9,518.88.

Coupons appurtenant to the Industrial Bonds maturing on or before February 1, 1933, which have not heretofore been paid, will be paid in full in cash. The aggregate face amount of such coupons is $2,375.

4. Preferred Stock

Holders of Preferred Stock are to receive for each share of such stock:

Warrants to purchase, at any time on or before February 1, 1950, 3 shares of Common Stock of the New Company at $35 per share.

5. Common Stock

Holders of Common Stock are to receive for each share of such stock:

Warrants to purchase, at any time on or before February 1, 1950, ¾ of a share of Common Stock of the New Company at $35 per share.

V. Executory Contracts Made or Adopted by the Receiver and Trustee

The New Company will be deemed to have assumed such of the contracts of the Present Company which are executory in whole or in part, including executory leases, as shall have been affirmed or adopted by the Receiver or the Trustee prior to the date of confirmation of the Plan, and also any executory contracts of the Receiver and the Trustee, which, by their terms, do not terminate at the conclusion of the receivership or reorganization proceedings.

VI. Description of New Securities

1. Income Mortgage Bonds

The new 5% Income Mortgage Bonds will be dated April 1, 1935, will mature April 1, 1970, and will be redeemable (as a whole or, if no cumulative interest on the Bonds shall be in arrears, in part, or, whether or not cumulative interest on the Bonds shall be in arrears, out of the cash proceeds of the Warrants as hereinafter provided) on any interest date at the principal amount thereof together with all unpaid cumulative interest. The Income Mortgage Bonds will not bear interest for the period prior to April 1, 1936; interest for each of the years end-

ing March 31, 1937 and March 31, 1938 is to be payable only to the extent earned in the preceding calendar year and only as and when declared by the Board of Directors in its discretion, but such interest to the extent so earned shall be cumulative; interest accruing from April 1, 1938 is to be fully cumulative at the rate of 5% per annum and will be required to be declared and paid to the extent earned; provided, however, that no interest shall be required to be declared due and payable upon the Income Mortgage Bonds to an amount greater than the amount by which the consolidated net current assets of the New Company and subsidiary companies as of the December 31st next preceding the declaration of such interest, exceeded the sum of $5,000,000. The term "subsidiary companies" as used herein shall mean companies 90% or more of whose capital stock entitled to vote for the election of directors shall be owned by the New Company. All unpaid cumulative interest shall be payable in any event at the maturity of the bonds. No dividends shall be paid on any class of stock prior to April 1, 1936, and no such dividends shall be paid thereafter unless all arrears of interest and interest payable during the current year shall have been declared payable on the bonds as required by the Income Mortgage. There is annexed hereto as Exhibit C (page 13) a statement of the provisions to be contained in the Income Mortgage with reference to the payment of interest on the Income Mortgage Bonds and the determination of net income available therefor. Such determination of available net income shall be made annually for the preceding calendar year, and any interest accruing on the bonds shall, if declared, be payable on the April 1, or on the April 1 and October 1, following such determination, all as more fully set forth in Exhibit C.

The Income Mortgage Bonds will be authorized in the amount of $11,053,200, all of which are to be presently issued in respect of the outstanding Industrial Bonds. The Income Mortgage Bonds will be issued under a mortgage and deed of trust, which will constitute (a) a lien, subject to the lien of the mortgage securing the Fuel Bonds so far as the same attaches, on the fixed properties, except as provided below, or securities of subsidiary companies owning fixed properties, acquired by the New Company in the reorganization, and (b) a lien on all fixed operating properties, or securities of subsidiary companies owning such properties, thereafter acquired by the New Company. It is intended that certain real estate of substantial extent not essential to operations and certain other properties no longer profitably employed

in the operations of the Present Company will be disposed of as rapidly as possible, either before or after the completion of the reorganization, and may be set apart until disposed of (either in a separate subsidiary company or otherwise), and neither such properties nor the securities of any company owning the same shall be included among the fixed properties of the New Company to be mortgaged. Said properties and securities to be excluded from the lien of the Income Mortgage shall be determined as hereinafter in Article IX provided. The Income Mortgage will contain provisions permitting the modification of any of the terms thereof (other than any change in the principal amount, maturity date or interest rate of the bonds, or in the provisions governing the payment of interest) with the consent of the holders of not less than 85% in principal amount of the Income Mortgage Bonds at the time outstanding; and will also contain provisions permitting releases of mortgaged property, acceleration of the maturity of the bonds after an event of default, etc.

As hereinafter provided in paragraph 3(a) of this Article VI, Income Mortgage Bonds with all unmatured coupons may be tendered at the principal amount of such bonds, flat, in lieu of cash in payment of the subscription price for shares of Common Stock of the New Company upon exercise of the Warrants described herein.

The Income Mortgage will also contain provisions permitting the subordination of the lien thereof to the lien of a mortgage to secure an issue of not exceeding $15,000,000 First and Refunding Mortgage Bonds, referred to below, which may hereafter be created by the New Company.

2. Common Stock

The Common Stock of the New Company, which will be without par value or have such par value as the Reorganization Managers shall determine as hereinafter in Article IX provided, is to be authorized in the amount of 1,000,000 shares, of which 552,660 shares will be presently issued to the holders of the Industrial Bonds as provided in the Plan. 315,379 shares will be reserved to provide for the Warrants issued pursuant to the Plan. The balance will be reserved for issue for corporate purposes of the New Company.

3. Warrants

Warrants will be authorized for the purchase of a total of 315,879 shares of Common Stock of the New Company at $35 per share. All Warrants issued under the Plan shall be identical, and may be exercised at any time and from time to time on or before February 1, 1950.

The Warrants or the agreement under which the Warrants are issued will provide that in case of the consolidation or merger of the New Company or the sale of its property as an entirety or substantially as an entirety, the Warrants shall continue in full force and effect in respect of whatever securities may be issued in such consolidation, merger or sale in exchange for Common Stock of the New Company, and will contain provisions for the adjustment in certain cases of the warrant price and of the number of shares of Common Stock purchasable under the Warrants. There is annexed hereto marked Exhibit D (page 17) a statement of such provisions.

Warrants for the purchase of fractional shares of Common Stock of the New Company will not be issued, but in lieu thereof scrip will be issued which will be exchangeable, in amounts aggregating full shares, for Warrants for full shares. Such fractional scrip will be issued in such form and on such terms and with such date or dates of expiration, not earlier than December 31, 1940, as may be determined as hereinafter in Article IX provided.

It will be further provided in respect of the Warrants:

(a) *Tender of Bonds.* In payment of the subscription price for shares of the Common Stock of the New Company upon exercise of the Warrants, the holders thereof may tender, in lieu of cash, Income Mortgage Bonds with all unmatured coupons at the principal amount of such Income Mortgage Bonds, flat.

(b) *Application of Proceeds of Warrants.* The cash proceeds of the Warrants shall be applied to the purchase, on calls for tenders, of Income Mortgage Bonds at prices not exceeding the principal amount thereof together with any unpaid cumulative interest thereon, or, to the extent that such purchases cannot be made, to the redemption by lot of Income Mortgage Bonds at the principal amount thereof together with any unpaid cumulative interest thereon.

All Income Mortgage Bonds so tendered in payment of the subscription price upon the exercise of the Warrants, or so purchased or redeemed with the proceeds of the Warrants, shall be cancelled and no Income Mortgage Bonds shall be issued in lieu thereof.

4. First and Refunding Mortgage Bonds (none to be presently issued)

The Income Mortgage and the Certificate of Incorporation of the New Company will contain provisions permitting the creation at some future time by the New Company, by resolution of its Board of Directors, of an issue of First and Refunding Mortgage Bonds which will be secured by a lien prior to the lien of the Income Mortgage on the property then covered thereby and on after-acquired property to the extent determined by the Board of Directors of the New Company and stated in the First and Refunding Mortgage. A vote of the stockholders of the New Company will be taken in the course of the reorganization proceedings authorizing the Board of Directors to create such First and Refunding Mortgage at some future time. The First and Refunding Mortgage Bonds may be authorized in an amount not exceeding $15,000,000, of which $4,000,000, or such lesser amount as may be required for the purpose, will be reserved to acquire or refund the Fuel Bonds. The balance may be issued when authorized by resolution concurred in by two-thirds in number of the entire Board of Directors of the New Company, for such purposes and under such restrictions as may be expressed in the First and Refunding Mortgage. The First and Refunding Mortgage Bonds may be issued in series and each series may have such maturity dates, interest rates, redemption prices, conversion and stock purchase privileges, sinking fund and other provisions as shall be determined by the Board of Directors of the New Company. *No First and Refunding Mortgage Bonds are to be issued in the reorganization.*

VII. Management

The New Company will have a Board of Directors of nine members. The first Board of Directors will consist of the following:

Arthur Roeder, Denver, Colorado
Bertram Cutler, Madison, New Jersey
John Evans, Denver, Colorado
Fred Farrar, Denver, Colorado
W. A. Maxwell, Jr., Denver, Colorado
S. G. Pierson, Denver, Colorado
Cyril J. C. Quinn, New York City
Carl J. Schmidlapp, Mill Neck, New York
J. F. Welborn, Denver, Colorado

In case any of the above named persons shall be unable to serve for any reason, their places will be filled by persons designated by the Industrial Committee, with the approval of the Reorganization Managers.

VIII. Method of Acceptance of the Plan

The method by which creditors, stockholders and other parties in interest may evidence their acceptance of the Plan, and, after confirmation by the Court in the reorganization proceedings, may participate therein, will be as determined by the Court by order or orders entered in the reorganization proceedings, and notice thereof will be given to the creditors, stockholders and other parties in interest in accordance with Article XI hereof or as required by such order or orders of the Court.

IX. Supervision and Consummation of Plan

Messrs. J. & W. Seligman & Co., as Reorganization Managers, shall have general supervision over the consummation of the Plan subject to the approval of the Court. The form and terms of the certificate of incorporation and by-laws of the New Company, the Income Mortgage and the Income Mortgage Bonds, the Common Stock, the Warrants and any other documents used in connection with the reorganization, and the steps to be taken to carry out the Plan, shall, in all respects not expressly defined in the Plan, be determined, subject to the approval of the Court, by the Reorganization Managers with the approval of the Industrial Committee and the Stockholders Committee. Messrs. J. & W. Seligman & Co. shall act as a co-partnership and in case of any change in said firm any successor firm as from time to time con-

stituted shall continue to act as Reorganization Managers with all the powers of the Reorganization Managers hereunder. If the Reorganization Managers at any time acting hereunder should resign or otherwise be unable to act, said two Committees, with the approval of the Court, may appoint a successor or successors who shall have all the powers of Reorganization Managers hereunder. Either of said Committees may act by a majority of its members, and such action may be taken at a meeting or in writing without a meeting. Any member of either of said Committees may in writing authorize any person to act in his place for any and all purposes. A written instrument signed by a majority of the members of either Committee, or the certificate of the Chairman or Secretary of such Committee as to any action taken by them, shall be sufficient evidence thereof for the purposes of the Plan.

The new securities may be delivered in the first instance in temporary form, exchangeable for definitive securities when prepared.

The Plan will be consummated only in accordance with the provisions of Section 77B of the Bankruptcy Act. The new securities provided for in the Plan will be issued only when the Plan has been confirmed by the United States District Court for the District of Colorado in accordance with the provisions of said Section. The Plan will not be carried out unless and until it has been accepted by or on behalf of holders of two-thirds in amount of the Industrial Bonds and the holders of a majority of the Preferred Stock and a majority of the Common Stock of the Present Company.

X. Reorganization Expenses

All expenses of reorganization and all costs of administration and other allowances made by the Court shall be paid in cash by the Trustee or the New Company, subject to the provisions of Section 77B of the Bankruptcy Act. Without limiting the generality of the foregoing, such expenses, costs and allowances shall include reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the reorganization proceedings and the prior receivership proceedings and the preparation and consummation of the Plan by officers, parties in interest, the Reorganization Managers and the Committees and other representatives of cred-

itors or stockholders, and the attorneys or agents of any of the foregoing and of the Present Company, as shall be determined or approved by the Court in the reorganization proceedings. The New Company will hold harmless and defend the directors and officers of the Present Company and the New Company, the Reorganization Managers, the Committees and the Trustee against all liability and expense arising from their acts in good faith under the Plan or in connection therewith. All amounts to be paid by the Trustee or the New Company under the Plan for services or expenses incident to the reorganization shall be subject to the approval of the Court.

It is proposed that, subject to the approval of the Court, the Reorganization Managers shall be entitled to receive $175,000 as compensation for their services as Reorganization Managers.

XI. Notices Under the Plan

Unless otherwise provided in Section 77B of the Bankruptcy Act or in any order or orders of the Court, whenever notice shall be required or permitted to be given under or pursuant to the Plan, such notice shall be given by publishing a copy of such notice once in each week for two successive weeks in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York, and also (1) in case of notice to the holders of Industrial Bonds and stockholders who shall have accepted the Plan, by mailing such notice postage prepaid to the addresses of such bondholders and stockholders set forth in the acceptances signed by them; and (2) in case of notices to the holders of Industrial Bonds and stockholders who shall not have accepted the Plan, by mailing such notice postage prepaid to such bondholders and stockholders whose names and addresses appear on the books of the Present Company or of the Trustee.

XII. Statements Contained in the Plan

The statements, opinions, computations, estimates, conclusions, etc., contained in the Introductory Statement, the Plan, and the Exhibits of the Plan (1) are submitted by the Present Company and are not made by or joined in by the Trustee or by any of the Committees or by the Reorganization Managers; (2) are made solely for the purpose of assisting the Court (after hearing) in the reorganization proceedings, and creditors, stockholders and other parties in interest, in making a determination as to the

fairness of the Plan; and (3) are not intended for the use or information of prospective purchasers of any securities referred to in the Plan whether now existing or proposed to be issued, or for any purpose other than the purpose stated in (2); and no one is authorized to make any statement regarding the Plan, whether with reference to any securities referred to therein or otherwise, which is not set forth herein.

The Reorganization Managers and the Committees in acting hereunder offer their services to the holders of the securities of the Present Company in an endeavor to carry out the reorganization in accordance with the Plan and subject to the supervision of the Court, but neither the Reorganization Managers nor the Committees assume any personal liability in connection with carrying out the Plan either in respect of the new securities or otherwise except to exercise good faith in such endeavor. Each bondholder and stockholder accepting the Plan does so with the understanding as set forth above and with the further understanding that the Reorganization Managers and the respective Committees are acting solely as agents of himself and of other security holders in an endeavor to carry out the reorganization in accordance with this Plan, and, as such agents, shall have only the powers and duties expressly conferred by the Plan. The Plan describes in general outline the character of the new securities which it is proposed the New Company will issue, and the method of effecting the reorganization, the precise terms and conditions of which are necessarily to be determined in accordance with the powers granted by the Plan, and under the supervision of the Court, to fit the facts and circumstances as they may exist from time to time during the reorganization.

EXHIBIT A
THE COLORADO FUEL AND IRON COMPANY
AND SUBSIDIARY COMPANIES

The following statement of profit and loss and surplus has been prepared from the published annual reports of the Present Company for the years 1926 to 1932 (for which years the consolidated accounts were cert and from information furnished by the Trustee† for the years 1933 and 1934. The statement is furnished solely as a matter of historical record, and inasmuch as the results shown below have been taken from previously of the Trustee, it should be understood that no adjustments have been made to profit and loss or surplus as between years in respect of the matters referred to in the footnotes.

COMPARATIVE STATEMENT OF PROFIT AND LOSS AND SURPLUS (Including Capital Surplus)
FOR THE CALENDAR YEARS 1926 TO 1934, INCLUSIVE

Particulars	1926	1927	1928	1929	1930	1931	1932	
Profit or *loss*, before deducting provision for depreciation and depletion, interest on funded debt, and provision for Federal income taxes[1]	$ 6,792,980.47	$ 6,601,186.64	$ 4,863,377.24	$ 6,378,874.43	$ 3,929,959.36	$ *236,457.44* (loss)	$ *1,242,744.17* (loss)	$
Deduct:								
Provision for depreciation and depletion[2]	1,860,274.19	2,012,885.48	2,105,907.00	2,130,778.47	1,970,915.82	1,473,721.24	1,387,148.40	
Balance	$ 4,932,706.28	$ 4,588,301.16	$ 2,757,470.24	$ 4,248,095.96	$ 1,959,043.54	$ *1,710,178.68* (loss)	$ *2,629,892.57* (loss)	$
Deduct:								
Interest on funded debt[3]	$ 1,807,551.06	$ 1,715,597.44	$ 1,673,096.79	$ 1,628,188.28	$ 1,624,074.49	$ 1,626,530.05	$ 1,611,368.62	$
Provision for Federal income taxes, including adjustments for prior years	376,740.81	295,184.83	73,454.22	269,859.68	36,320.46	26,497.96	12,000.00	
Together	$ 2,184,291.87	$ 2,010,782.27	$ 1,746,551.01	$ 1,898,047.96	$ 1,660,394.95	$ 1,653,028.01	$ 1,623,368.62	$
Profit or *loss*, before credits and *charges* shown below	$ 2,748,414.41	$ 2,577,518.89	$ 1,010,919.23	$ 2,350,048.00	$ 298,648.59	$ *3,363,206.69* (loss)	$ *4,253,261.19* (loss)	$
Surplus adjustments:								
Undepreciated value of equipment dismantled[2]	$ *548,163.42**	$ *471,827.16**	$ *234,875.39**	$ *409,396.70**	$ *440,077.57**	$ *918,306.34**	$ *661,370.41**	$
Transfers from contingent and operating reserves				704,337.03				
Write off ore development expenses				*551,659.65**				
Additional provision workmen's compensation								
Capital surplus created through reduction of capital stock in the amount of $25,537,875, less adjustment of property values, etc.				8,619,256.92				
Dividends paid on:								
Preferred stock	*160,000.00**	*160,000.00**	*160,000.00**	*160,000.00**	*160,000.00**	*120,000.00**		
Common stock					*595,817.25**	*85,116.75**		
Together	$ *708,163.42**	$ *631,827.16**	$ *394,875.39**	$ *416,719.32**	$ 7,423,362.10	$ *1,123,423.09**	$ *661,370.41**	$
Net additions to or *deductions* from surplus	$ 2,040,250.99	$ 1,945,691.73	$ 616,043.84	$ 1,933,328.68	$ 7,722,010.69	$ *4,486,629.78**	$ *4,914,631.60**	$
Surplus or *deficit* at beginning of year	*146,882.92*[5] (def.)	1,893,368.07	3,839,059.80	4,455,103.64	6,388,432.32	14,110,443.01	9,623,813.23	
Surplus at end of year	$ 1,893,368.07	$ 3,839,059.80	$ 4,455,103.64	$ 6,388,432.32	$14,110,443.01	$ 9,623,813.23	$ 4,709,181.63	$

NOTES—

*All deductions are shown in italics.

[1] No adjustment has been made to profit and loss as between years to reflect certain changes made during the period in the method of computing cost of sales or for various overlapping charges which have been ded reflected on the books.

[2] Provisions for depreciation and depletion and losses on retirements were affected by appraisal adjustments made during the period, and the profit and loss figures for the individual years have not been adjusted for

[3] Interest charges did not include any amortization of bond discount and expense which had been previously charged to surplus as at January 1, 1926.

[4] Interest on the Industrial Bonds has not been accrued subsequent to July 31, 1933. If such interest had been accrued, interest on funded debt for 1933 would have been increased by $575,687.50 and for 1934 by $1,38 justments, correspondingly increased and the surplus correspondingly decreased for those years.

[5] After miscellaneous adjustments as at January 1, 1926, reclassification of property accounts including increases in values to offset bond discount and expense then written off, etc.

†On August 1, 1933, a Receiver was appointed for the properties of the Present Company. On August 1, 1934, a Trustee was appointed for the estate of the Present Company under Section 77B of the Bankruptcy Ac was still in possession of such estate.

EXHIBIT A
THE COLORADO FUEL AND IRON COMPANY AND SUBSIDIARY COMPANIES

the published annual reports of the Present Company for the years 1926 to 1932 (for which years the consolidated accounts were certified by Messrs. Price, Waterhouse & Co.) tement is furnished solely as a matter of historical record, and inasmuch as the results shown below have been taken from previously published annual reports and the accounts and loss or surplus as between years in respect of the matters referred to in the footnotes.

VE STATEMENT OF PROFIT AND LOSS AND SURPLUS (Including Capital Surplus)
FOR THE CALENDAR YEARS 1926 TO 1934, INCLUSIVE

	1928	1929	1930	1931	1932	1933	1934
86.64	$ 4,863,377.24	$ 6,378,874.43	$ 3,929,959.36	$ *236,457.44* (loss)	$ *1,242,744.17* (loss)	$ 5,518.35	$ 1,343,354.63
85.48	2,105,907.00	2,130,778.47	1,970,915.82	1,473,721.24	1,387,148.40	1,429,805.82	1,358,378.86
01.16	$ 2,757,470.24	$ 4,248,095.96	$ 1,959,043.54	$ *1,710,178.68* (loss)	$ *2,629,892.57* (loss)	$ *1,424,287.47* (loss)	$ *15,024.20* (loss)
07.44	$ 1,673,096.79	$ 1,628,188.28	$ 1,624,074.49	$ 1,626,530.05	$ 1,611,368.62	$ 1,033,812.29(4)	$ 225,504.17(4)
34.83	73,454.22	269,859.68	36,320.46	26,497.96	12,000.00	37,929.05	1,011.15
42.27	$ 1,746,551.01	$ 1,898,047.96	$ 1,660,394.95	$ 1,653,028.01	$ 1,623,368.62	$ 1,071,741.34	$ 226,515.32
8.89	$ 1,010,919.23	$ 2,350,048.00	$ 298,648.59	$ *3,363,206.69* (loss)	$ *4,253,261.19* (loss)	$ *2,496,028.81*(4) (loss)	$ *241,539.52*(4) (loss)
*7.16**	$ *234,875.39**	$ *409,396.70**	$ *440,077.57**	$ *918,306.34**	$ *661,370.41**	$ *110,126.40**	$ *45,738.58**
		704,337.03				150,000.00	
		*551,659.65**					
						*120,000.00**	
		8,619,256.92					
*0.00**	*160,000.00**	*160,000.00**	*160,000.00**	*120,000.00**			
			*595,817.25**	*85,116.75**			
*7.16**	$ *394,875.39**	$ *416,719.30**	$ 7,423,362.10	$ *1,123,423.09**	$ *661,370.41**	$ *80,126.40**	$ *45,738.58**
1.73	$ 616,043.84	$ 1,933,328.68	$ 7,722,010.60	$ *4,486,629.78**	$ *4,914,631.60**	$ *2,576,155.21**	$ *287,278.10**
3.07	3,839,059.80	4,455,103.64	6,388,432.32	14,110,443.01	9,623,813.23	4,709,181.63	2,133,026.42(4)
0.80	$ 4,455,103.64	$ 6,388,432.32	$14,110,443.01	$ 9,623,813.23	$ 4,709,181.63	$ 2,133,026.42(4)	$ 1,845,748.32(4)

ain changes made during the period in the method of computing cost of sales or for various overlapping charges which have been deducted in the year in which the entry was

d by appraisal adjustments made during the period, and the profit and loss figures for the individual years have not been adjusted for subsequent write-offs or surplus charges.
hich had been previously charged to surplus as at January 1, 1926.
. If such interest had been accrued, interest on funded debt for 1933 would have been increased by $575,687.50 and for 1934 by $1,381,650, and the losses, before surplus ad-
se years.
y accounts including increases in values to offset bond discount and expense then written off, etc.
mpany. On August 1, 1934, a Trustee was appointed for the estate of the Present Company under Section 77B of the Bankruptcy Act and such Trustee at December 31, 1934,

EXHIBIT B.

THE COLORADO FUEL AND IRON COMPANY AND SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31, 1934

(Prepared by the Trustee†)

ASSETS

CURRENT ASSETS:			
Cash in banks and on hand			$ 3,636,629.38
Notes and accounts receivable:			
Customers	$ 1,306,534.90		
Others	236,323.92		
	$ 1,542,858.82		
Deduct—Reserves	559,984.41		
		982,874.41	
Warrants of States and political subdivisions thereof, at face values		54,007.73	
Inventories, valued at not more than the lower of cost or market		3,546,856.78	
			$ 8,220,368.30
MISCELLANEOUS INVESTMENTS			31,128.00
PROPERTY ACCOUNTS, AT BOOK VALUES, which do not purport to represent realizable values nor sound values at existing price levels:			
Land, mineral reserves and water rights	$14,763,709.43		
Less—Reserves for depletion	498,093.40		
		$14,265,616.03	
Buildings, machinery and equipment	$46,188,380.38		
Less—Reserves for depreciation	21,990,937.99	24,197,442.39	
			38,463,058.42
PATENTS, TRADE-MARKS AND GOODWILL			1.00
DEFERRED CHARGES			110,754.38
			$46,825,310.10

LIABILITIES

CURRENT LIABILITIES:		
Accounts payable		
Accrued liabilities:		
Salaries and wages		$ 179,53
Taxes, other than income taxes		535,80
Interest to December 31, 1934, on the Fuel Bonds(1)		93,75
Reserve for Federal income taxes of prior years		
Reserve for workmen's compensation payable (of which it is estim that $60,000 is payable in 1935)		
FUNDED DEBT:		
Fuel Bonds(2):		
Authorized		$ 6,000,0(
Issued		$ 5,994,0(
Redeemable and cancelled		895,00
		$ 5,099,0(
Less—Held in treasury(3)		599,00
Industrial Bonds (now in default)(3):		
Authorized		$45,000,0(
Issued		$39,000,0(
Redeemable and cancelled		3,626,0(
		$35,374,0(
Less—Held in Treasury(3)		7,741,0(
Add—Interest on the Industrial Bonds from February 1, to July 31, 1933(4)		
Total liabilities		
EXCESS OF BOOK VALUE OF ASSETS OVER LIABILITIES		
Represented by:		
Preferred Stock—8% cumulative, $100 par—20,000 shares(5)		
Common Stock of no par value—340,505 shares		

NOTES:

(1) Interest on the Fuel Bonds has been accrued to December 31, 1934.

(2) Sinking fund requirements for the Fuel Bonds have been satisfied for the year ended June 30, 1934; but the sinking fund requirements for the Industrial Bonds have not been met since July 1, 1932.

(3) At December 31, 1934, of the treasury bonds shown above $599,000 of Fuel Bonds and $663,000 of Industrial Bonds were deposited with the Industrial Commission of Colorado to secure payments under the Wor 31, 1934, the Trustee has purchased $100,000 of Government bonds at a cost of approximately $105,000 and deposited them with the Industrial Commission of Colorado in place of said Industrial Bonds, which are now hel

(4) Interest on the Industrial Bonds has been accrued from February 1, 1933, the date of the last interest payment, to July 31, 1933. The interest from August 1, 1933, to December 31, 1934, which has not been accrue

(5) Dividends have not been paid on the Preferred Stock since November 25, 1931.

Certain shares, bonds and a note of subsidiary companies are pledged as collateral under the indenture securing the Industrial Bonds.

†On August 1, 1933, a Receiver was appointed for the properties of the Present Company. On August 1, 1934, a Trustee was appointed for the estate of the Present Company under Section 77B of the Bankruptcy was still in possession of such estate.

EXHIBIT B.

THE COLORADO FUEL AND IRON COMPANY
AND SUBSIDIARY COMPANIES
CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31, 1934
(Prepared by the Trustee†)

$ 3,636,629.38	
982,874.41	
54,007.73	
3,546,856.78	
	$ 8,220,368.30
	31,128.00
t realizable val-	
$14,265,616.03	
24,197,442.39	
	38,463,058.42
	1.00
	110,754.38
	$46,825,310.10

LIABILITIES

Current Liabilities:			
Accounts payable		$ 574,293.78	
Accrued liabilities:			
Salaries and wages	$ 179,531.76		
Taxes, other than income taxes	535,808.70		
Interest to December 31, 1934, on the Fuel Bonds[1]	93,750.00		
		809,090.46	
Reserve for Federal income taxes of prior years		41,011.15	
Reserve for workmen's compensation payable (of which it is estimated that $60,000 is payable in 1935)		218,716.39	$ 1,643,111.78
Funded Debt:			
Fuel Bonds[2]:			
Authorized	$ 6,000,000.00		
Issued	$ 5,994,000.00		
Redeemable and cancelled	895,000.00		
	$ 5,099,000.00		
Less—Held in treasury[3]	599,000.00		
		$ 4,500,000.00	
Industrial Bonds (now in default)[2]:			
Authorized	$45,000,000.00		
Issued	$39,000,000.00		
Redeemable and cancelled	3,626,000.00		
	$35,374,000.00		
Less—Held in Treasury[3]	7,741,000.00		
		27,633,000.00	
		$32,133,000.00	
Add—Interest on the Industrial Bonds from February 1, 1933 to July 31, 1933[4]		690,825.00	
			32,823,825.00
Total liabilities			$34,466,936.78
Excess of Book Value of Assets Over Liabilities			12,358,373.32
Represented by:			
Preferred Stock—8% cumulative, $100 par—20,000 shares[5]			
Common Stock of no par value—340,505 shares			
			$46,825,310.10

year ended June 30, 1934; but the sinking fund requirements for the Industrial Bonds have not been met since July 1, 1932.
Bonds and $663,000 of Industrial Bonds were deposited with the Industrial Commission of Colorado to secure payments under the Workmen's Compensation Act. Since December
oximately $105,000 and deposited them with the Industrial Commission of Colorado in place of said Industrial Bonds, which are now held in the treasury.
date of the last interest payment, to July 31, 1933. The interest from August 1, 1933, to December 31, 1934, which has not been accrued, would amount to $1,957,337.50.
31.
teral under the indenture securing the Industrial Bonds.
nt Company. On August 1, 1934, a Trustee was appointed for the estate of the Present Company under Section 77B of the Bankruptcy Act and such Trustee at December 31, 1934.

Exhibit C.

The provisions to be contained in the Income Mortgage with reference to the payment of interest on the Income Mortgage Bonds and the determination of net income available therefor shall be in substantially the following form.

(The New Company mentioned in the foregoing Plan is referred to in the following provisions as "the Company", the Income Mortgage Bonds as "the Bonds", the Income Mortgage as "this Indenture" and the Trustee under the Income Mortgage as "the Trustee").

Article

Payment of Interest.

Section 1. The Bonds shall bear no interest for the period prior to April 1, 1936. Commencing April 1, 1936 the Bonds will bear interest, subject to the provisions of this Article , at the rate of 5% per annum. Except as hereinafter in this Article provided, no interest shall become due and payable on any of the Bonds until the principal of such Bonds shall become due and payable, whether at the maturity thereof, on call for redemption, by declaration or otherwise.

Section 2. Interest on the Bonds for the year ending March 31, 1937, shall be payable only to the extent that the available net income of the Company, as hereinafter defined, for the calendar year 1936 shall be sufficient to pay such interest, and shall be payable only as and when the Board of Directors of the Company in its sole and unrestricted discretion shall declare the same to be due and payable as hereinafter provided, but such interest, to the extent so earned, shall be cumulative and shall be payable in any event when the principal of the Bonds shall become due and payable. Interest on the Bonds for the year ending March 31, 1938, shall be payable only to the extent that the available net income of the Company, as hereinafter defined, for the calendar year 1937 shall be sufficient to pay such interest, and shall be payable only as and when the Board of Directors of the Company in its sole and unrestricted discretion shall declare the same to be due and payable as hereinafter provided, but such interest, to the extent so earned, shall be cumulative and shall be payable in any event when the principal of the Bonds shall become due and payable.

If the available net income of the Company for the calendar year 1936 shall not be sufficient to pay interest on the Bonds for the year ending March 31, 1937, or if the available net income of the Company for the calendar year 1937 shall not be sufficient to pay interest on the Bonds for the year ending March 31, 1938, at the full rate of 5% per annum, then the interest on the Bonds for such year or years, to the extent not so earned, whether the deficiency shall be total or partial, shall not thereafter be payable either when the principal of the Bonds shall become due and payable or prior thereto, and whether or not the Company shall have surplus available net income in any subsequent year or years.

Interest on the Bonds accruing from April 1, 1938 shall be fully cumulative, whether or not the available net income of the Company in any calendar year shall be sufficient to pay such interest, that is to say, if interest on the Bonds at the full rate of 5% per annum from April 1, 1938, shall not have become due and payable as hereinafter provided, the deficiency shall accumulate and, subject to the provisions of Section 9 and Section 10 of this Article , shall be declared due and payable by the Board of Directors of the Company as hereinafter provided whenever the available net income of the Company shall be sufficient to pay such interest or any part thereof, and in any event when the principal of the Bonds shall become due and payable. Subject to the provisions of Section 9 and Section 10 of this Article , the Board of Directors shall apply, to the extent necessary, all of the available net income of the Company for each calendar year, commencing with the calendar year 1938, to the payment as hereinafter provided on April 1 and October 1 of the year following such calendar year of any unpaid interest on the Bonds accrued from April 1, 1938 to the October 1 of the year following such calendar year.

The expression "unpaid cumulative interest" or similar expression whenever used in this Indenture shall be deemed to mean interest on the Bonds at the rate of 5% per annum from April 1, 1938 to date, to the extent that such interest shall not have been previously paid, plus any interest on the Bonds for the years ending March 31, 1937 and March 31, 1938, to the extent (but not exceeding the rate of 5% per annum) that such interest shall have been earned in the calendar years 1936 and 1937 respectively, and shall not have been previously paid.

Accumulations of interest shall not bear interest.

Section 3. On or before March 15, 1937, the Board of Directors of the Company shall determine the amount, if any, of the available net income of the Company for the calendar year 1936, and shall declare to be due and payable on April 1, 1937, such sum, if any, in respect of interest on the Bonds for the year ending March 31, 1937, as the Board of Directors of the Company in its sole and unrestricted discretion shall determine, not exceeding interest at the rate of 5% per annum, and not exceeding the amount of the available net income of the Company for the calendar year 1936.

On or before March 15, 1938, the Board of Directors of the Company shall determine the amount, if any, of the available net income of the Company for the calendar year 1937, and shall declare to be due and payable on April 1, 1938, such sum, if any, in respect of interest on the Bonds for the year ending March 31, 1938, as the Board of Directors of the Company in its sole and unrestricted discretion shall determine, not exceeding interest at the rate of 5% per annum, and not exceeding the amount of the available net income of the Company for the calendar year 1937.

On or before March 15, 1939, and on or before March 15 in each year thereafter to and including March 15, 1969, the Board of Directors of the Company shall determine the amount, if any, of the available net income of the Company for the preceding calendar year and, subject to the provisions of Section 9 and Section 10 of this Article , shall declare to be due and payable on the next succeeding April 1 such sum, if any, as such available net income shall suffice to pay in respect of interest on the Bonds not theretofore paid from April 1, 1938 to such next succeeding April 1, not exceeding interest for said period at the rate of 5% per annum, and shall declare to be due and payable on the next succeeding October 1 such sum, if any, as the balance of such available net income shall suffice to pay in respect of interest on the Bonds to accrue from such next succeeding April 1 to such next succeeding October 1, not exceeding interest for said period at the rate of 5% per annum.

If the Board of Directors of the Company shall, on or before March 15, 1939, or on or before March 15 in any year thereafter, declare to be due and payable on the next succeed-

ing April 1 and October 1 as aforesaid all interest on the Bonds not theretofore paid from April 1, 1938 to the next succeeding April 1 and October 1, respectively, at the rate of 5% per annum, the Board of Directors of the Company may in its sole and unrestricted discretion also declare to be due and payable on the next succeeding April 1 or October 1 or on both such dates such part of any unpaid cumulative interest in respect of the years ending March 31, 1937 and March 31, 1938, as the Board of Directors shall determine.

Section 4. Within ten (10) days after March 15 of each year, the Company shall file with the Trustee an income statement specifying the amount of the available net income, if any, of the Company for the preceding calendar year, specifying the basis or method of ascertaining the same, and specifying further the amount, if any, declared by the Board of Directors of the Company to be due and payable in respect of interest on the Bonds on the next succeeding April 1, or on the next succeeding April 1 and October 1. Each such statement to be filed with the Trustee shall be accompanied by (1) a certificate, in form satisfactory to the Trustee, of certified public accountants satisfactory to the Trustee, who may be the accountants regularly employed by the Company to audit its accounts, that such statement is correct and prepared in accordance with the provisions of this Indenture, and (2) a certified copy of the resolution of the Board of Directors of the Company with reference to the determination of such available net income and declaration of interest. The Trustee shall be under no duty or obligation with respect to any such statement or certificate except to keep the same on file and available for inspection by holders of Bonds during usual business hours.

Section 5. Whenever any interest on the Bonds shall have been declared by the Board of Directors of the Company to be due and payable on any April 1 or October 1 as above provided, such interest shall become due and payable on the date on which it is so declared to be due and payable.

Section 6. Whenever the principal of any of the Bonds shall become due and payable, whether at maturity, upon call for redemption, by declaration or otherwise, all unpaid cumulative interest thereon to the date when such principal shall become due and payable shall, without any declaration by the

Board of Directors of the Company, become due and payable and the Company covenants and agrees that it will pay the full amount of all such unpaid cumulative interest together with the principal of such Bonds.

Section 7. The respective coupons attached to the Bonds shall be expressed to be payable on April 1, 1937, on April 1, 1938, and on April 1 and October 1 of each year thereafter beginning with April 1, 1939 and including April 1, 1970. Each coupon maturing prior to April 1, 1970, shall be an obligation of the Company to pay the amount of interest, if any, becoming due and payable on its date as hereinbefore provided. The coupon maturing April 1, 1970 appurtenant to any of the Bonds, and in the event that, by reason of any provision of this Indenture, the principal of any of the Bonds shall become due and payable upon some interest payment date prior to April 1, 1970, the coupon maturing on such interest payment date appurtenant to such Bonds, shall be an obligation of the Company to pay all unpaid cumulative interest on such Bonds to April 1, 1970, or, as the case may be, to the date when the principal of such Bonds shall become due and payable. In the event that by reason of any provision of this Indenture the principal of any of the Bonds shall become due and payable prior to the maturity thereof upon any date not an interest payment date the coupon next maturing after such date shall be an obligation of the Company to pay all of the unpaid cumulative interest on such Bonds to the date when the principal of such Bonds shall have become due and payable.

Interest on the coupon Bonds shall be payable only upon presentation and surrender of the several coupons annexed thereto as such coupons respectively become due and payable as herein provided; and when and as paid all coupons shall forthwith be cancelled. Coupons expressed to be payable on a date on which no interest shall be declared to be due and payable as herein provided shall after the payment date thereof be null and void.

Section 8. The available net income of the Company for any calendar year, as such term is used in this Article , shall be the consolidated net income for such calendar year of the Company and subsidiary companies, as hereinafter defined, computed and ascertained as follows: From the gross revenues of the Company and its subsidiary companies (including non-

operating income, but excluding any gains from the sale of capital assets or from the purchase or acquisition of outstanding securities at less than their face amount or stated value), there shall be deducted all operating and non-operating expenses of the Company and its subsidiary companies, including therein reasonable and proper charges for current repairs and current maintenance of their plants and properties, rentals, license charges, taxes, workmen's compensation and any and all other charges now or hereafter required to be made or paid by law, insurance, reasonable and proper charges for depreciation and depletion, interest charges upon all indebtedness of the Company and its subsidiary companies (excepting interest on the Bonds), and also all other charges against income including such charges and reserves for obsolescence and any other purposes as the Board of Directors of the Company in its discretion shall deem necessary and proper. For the purposes of this Section 8, charges for current repairs shall include provision for all such renewals as under good accounting practice are chargeable to expense, irrespective of when the expenditures for such renewals are actually made; and there shall not be included in charges for current repairs in any year any expenditures for renewals in respect of which provision shall have been made by charges to expense in previous years. In making such computation of consolidated net income, all intercorporate transactions shall be eliminated and appropriate deductions and adjustments shall be made in respect of shares of stock of any subsidiary company which are not owned by the Company or another subsidiary company, all in accordance with good accounting practice. No deduction shall be made for losses sustained by the Company or any of its subsidiary companies from the sale of capital assets. No deduction shall be made for taxes which are imposed on income or profits after the deduction of interest, except to the extent that such taxes are payable by subsidiary companies which, under the pertinent law and regulations, shall file separate returns and pay such taxes on the basis of such separate returns.

For the purpose of this Article , the term "subsidiary company" shall be deemed to mean a corporation ninety per cent. or more of whose outstanding capital stock entitled to vote for the election of directors shall at the time be held, directly or indirectly, by the Company, or by any one or more subsidiaries of the Company, or by the Company and one or

more subsidiaries of the Company. The term "capital assets" as used in this Section 8 shall be deemed to mean all assets except current assets as hereinabove defined.

Section 9. Anything in this Indenture to the contrary notwithstanding, interest shall not be required to be declared due and payable upon the Bonds, until the principal of such Bonds shall become due and payable (whether at maturity thereof, on call for redemption, by declaration or otherwise), to an amount greater than the amount by which the consolidated net current assets of the Company and its subsidiary companies, as of the December 31st next preceding the declaration of such interest, exceeded the sum of $5,000,000.

The term "current assets" of the Company and its subsidiary companies as used in this Section 9 shall be deemed to mean (a) cash on hand and in banks, excluding any cash required to be applied to the retirement of the Bonds; (b) good current accounts and bills and notes receivable acquired in the ordinary course of business; (c) raw material (not including ore or coal, except such as have been actually mined and shall then be on the surface at the mines available for shipment or in transit, or at works) and material in process of manufacture, and manufactured products, such material and products being taken at the cost thereof, without interest, if the cost be below market value, but at market value, if that be below cost; (d) readily marketable securities including in such term shares of stock (other than securities issued or assumed by the Company or by any subsidiary company), taken at the cost or market value thereof, whichever is lower; and (e) any other items which are properly classified as "current assets" in accordance with sound accounting practice. In computing current assets for the purposes of this Section 9 there shall not be included any assets which are pledged or deposited as security for any obligation which is not a current liability as said term is hereinafter defined, but there shall be included assets of the character aforesaid which are pledged or deposited as security for or for the purpose of paying current liabilities. The term "current liabilities" of the Company and its subsidiary companies as used in this Section 9 shall be deemed to mean all liabilities, whether or not due, of the Company and its subsidiaries or secured by lien upon property of the Company or its subsidiary companies, except liabilities in respect

of interest which shall not have been declared due and payable on the Bonds and except such liabilities as are not payable within the succeeding twelve months, but including all amounts payable within the succeeding twelve months in respect of any sinking fund or analogous funds for any indebtedness not due within the succeeding 12 months, and for any stocks or other securities of the Company or its subsidiary companies. For the purposes of this Section 9, current liabilities shall include liabilities arising from indorsements or guaranties of current liabilities as well as actual current liabilities. In computing contingent liabilities because of indorsements or guaranties credit shall be allowed as a contingent asset up to the amount of such liabilities for any surplus of the current assets of the corporation primarily liable upon or which issued the obligations indorsed or guaranteed, over and above the current liabilities of such corporation other than the indorsed or guaranteed obligation. For the purposes of this Section 9, the determination of current assets and current liabilities shall be on the basis of a consolidated balance sheet of the Company and its subsidiaries, with inter-company items eliminated. The term "consolidated net current assets" of the Company and its subsidiary companies shall mean the excess of consolidated current assets over consolidated current liabilities.

Whenever the Board of Directors of the Company shall determine the amount of the consolidated net current assets of the Company and its subsidiary companies for the purpose of this Section 9, and a firm of certified public accountants satisfactory to the Trustee, who may be the accountants regularly employed by the Company to audit its accounts, shall certify that in their opinion such determination is fair and correct, then such determination shall be final and conclusive for all purposes of this Section 9. A copy of such audit so certified by such accountants, accompanied by a certified copy of the resolutions of the Board of Directors with reference to the determination of the consolidated net current assets of the Company and its subsidiary companies for the purposes of this Section 9, shall be filed with the Trustee on or before March 25 of each year. The Trustee shall be under no duty or obligation with respect to any such audit or certificate except to keep the same on file and available for inspection by holders of Bonds during usual business hours.

Any available net income of the Company for any calendar year commencing with the calendar year 1938 which shall not be applied to the payment of interest on the Bonds because of the provisions of this Section 9 shall be carried forward and be added to the gross revenues of the Company for the ensuing year.

Section 10. Interest on the Bonds will be required to be paid in any calendar year only in amounts equal to ¼ of 1% of the principal amount of Bonds, or in multiples thereof. Smaller fractional amounts of available net income for any calendar year commencing with the calendar year 1938 shall be carried forward and be added to the gross revenues of the Company for the ensuing year.

Section 11. The Company will not pay any dividends on any class of stock of the Company prior to April 1, 1936, and will not pay any such dividends in the year ending March 31, 1937, or in the year ending March 31, 1938, unless interest on the Bonds at the rate of 5% per annum for such year shall have been declared to be due and payable on the succeeding April 1 and the money to pay such interest shall have been set apart. No dividends on any class of stock of the Company shall be paid in any calendar year, commencing with the calendar year 1938, unless there shall previously have been declared due and payable, and money set aside for the payment of, all interest on the Bonds for the years ending March 31, 1937, and March 31, 1938, to the extent that such interest shall have been earned in the calendar years 1936 and 1937, respectively, and, commencing with the calendar year 1939, also all interest on the Bonds at the rate of 5% per annum from April 1, 1938 to the October 1 in the calendar year in which such dividend shall be declared.

Section 12. No interest shall accrue or be payable upon any instalment of interest on the Bonds, or upon the coupons therefor, unless or until the Company shall have made default in paying the same, or some part thereof, upon demand on or after the date when such instalment shall have become due and payable as herein provided, and in that event such interest thereon shall accrue only from the date of such default at the rate of five per cent. per annum.

Section 13. Anything in this Indenture to the contrary not-

withstanding, the Board of Directors of the Company shall be entitled, in its sole and unrestricted discretion (but subject to the provisions of the last paragraph of Section 3 of this Article), to declare to be due and payable and to cause to be paid any unpaid cumulative interest on the Bonds, whether or not there shall be available net income of the Company applicable to the payment of such interest; provided that the Board of Directors shall not declare any such unpaid cumulative interest to be due and payable, except out of available net income of the Company applicable thereto, unless there shall have been filed with the Trustee a certificate dated not more than ninety days prior to such declaration, signed by an independent engineer or firm of engineers or engineering corporation selected by the Company and acceptable to the Trustee, stating in his, their or its opinion that, at the date of said certificate, the mortgaged properties (other than those whose operation the Board of Directors of the Company, by resolution, shall have decided to discontinue, either temporarily or permanently) are being adequately maintained and are in good repair and in reasonably adequate working order according to the usual practice of companies conducting similar operations.

Section 14. Whenever any interest shall become due and payable by the Company under the provisions of this Indenture, the Company shall cause notice of the date of such payment and the amount thereof to be published in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York, at least once prior to such date of payment; but, neither this requirement to publish such notice nor the fact that such publication may not be made before the day on which such interest shall be due and payable in accordance with the provisions of this Indenture shall postpone the date on which such payment is required, under the provisions hereof, to be made.

Section 15. In case the Company shall be consolidated with or merged into any other corporation, or in case the property of the Company as an entirety, or substantially as an entirety, shall be sold to some other corporation, the corporation formed by such consolidation or into which the Company shall have become merged, or which shall have purchased the property of the Company as an entirety, or substantially as an entirety, shall, as a part of such consolidation or merger, or as a part

of the purchase price in case of any such sale, expressly assume the due and punctual payment of the principal of the Bonds and, as a fixed charge payable semi-annually on April 1 and October 1, interest at the rate of 5% per annum on the Bonds from the April 1 or October 1 next preceding the date of such consolidation, merger or sale, and shall agree to pay within three years after the date of such consolidation, merger or sale all unpaid cumulative interest on the Bonds, if any, up to the April 1 or October 1 next preceding the date of such consolidation, merger or sale.

Exhibit D.

The Warrants issued pursuant to the foregoing Plan shall be subject to substantially the following terms and conditions, which shall be set forth in the Warrants or in the Agreement under which the Warrants are issued.

(The New Company mentioned in the Plan is referred to in the following provisions as the "Company".)

A. The term "warrant price" wherever used herein shall mean the price per share at which shares of the Common Stock of the Company shall, at the time, be purchasable under any Warrant, determined as hereinafter provided. The term "Common Stock" wherever used herein shall mean not only the 1,000,000 shares of Common Stock of the Company authorized by its Certificate of Incorporation at the date of the Warrants, but also the shares of stock of any class hereafter authorized which shall not be limited to a fixed sum or percentage in respect to the right of the holders thereof to participate in dividends, or in the distribution of assets upon a voluntary or involuntary liquidation, dissolution or winding up of the Company.

B. The warrant price from and after the issuance of the Warrants, unless and until adjusted as hereinafter provided, shall be $35 per share. Except in accordance with the provisions of Paragraph C (3) below, the warrant price shall never exceed $35 per share and, having been reduced at any time or from time to time by adjustment as herein provided, shall never thereafter, except in accordance with the provisions of said Paragraph C (3) below, be increased above the amount to which so reduced, notwithstanding the subsequent issue of

shares of Common Stock at a price exceeding such reduced warrant price.

C. For the purpose of this Paragraph C, the term "additional shares" shall mean all shares of Common Stock (in addition to the 552,660 shares to be outstanding at the date of the Warrants) hereafter issued or sold from time to time, whether at a price equal to or above or below the warrant price then in effect. If and whenever, prior to the exercise or expiration of all purchase rights represented by any Warrants at any time outstanding, the Company shall issue or sell any "additional shares" at a price less than the warrant price in effect immediately prior to such issue or sale, the warrant price shall thereupon be adjusted, and if more than one issue or sale shall be made successively adjusted, as follows: the adjusted warrant price shall be determined by multiplying 552,660 by the Base Price (the term Base Price for the purposes hereof being deemed to mean $35 unless and until reduced pursuant to Paragraph D below, and when so reduced, the term Base Price shall mean such reduced price), and adding to the product thereby obtained a sum equal to the aggregate amount of money in dollars, or the fair value in dollars of the property or other consideration, if any, received by the Company upon the issue of all "additional shares" then or at any time theretofore issued, and dividing the resulting total by a divisor consisting of 552,660 increased by the number of all such "additional shares", and the resulting quotient shall be the adjusted warrant price per share. Upon each such adjustment of the warrant price, the holder of each Warrant shall thereafter be entitled, instead of purchasing the number of shares specified in his Warrant at the price of $35 per share, to purchase at the adjusted warrant price per share the number of shares calculated to the nearest one-hundredth of a share, obtained by multiplying the Base Price by the number of shares stated to be purchasable on the face of his Warrant and dividing the product so obtained by the adjusted warrant price per share.

For the purpose of this Paragraph C, the following provisions shall also be applicable:

(1) Except as hereinafter in this sub-paragraph (1) provided, shares of Common Stock issued as a stock dividend shall be treated as "additional shares" but shall be deemed to have been issued without consideration. If at any time the

Company shall declare a cash dividend on any of the Common Stock and shall contemporaneously or within three months after the date of payment of such dividend give to the holders thereof the right to subscribe for additional Common Stock at a price which shall net the Company in the aggregate substantially the amount of such cash dividend so declared, such Common Stock so issued in respect of any such subscription shall be deemed to have been issued as a stock dividend. The provisions of this sub-paragraph (1) are subject to the following: In case of the issue of stock dividends in an amount not exceeding (taking any shares so issued at the warrant price in effect at the time of such issue) the aggregate amount of the earned surplus of the Company as hereinafter defined, the shares of Common Stock issued as such stock dividend shall be deemed to have been issued for a consideration equal to the warrant price in effect at the time of such issue, and, accordingly, no adjustment shall be made in the warrant price or in the number of shares purchasable under the Warrants in such case.

(2) In case the Company shall at any time issue in exchange for shares of its Common Stock theretofore issued and outstanding a larger number of shares of Common Stock, the excess number of shares of Common Stock so issued shall be treated as a stock dividend subject to all the provisions of the foregoing sub-paragraph (1) and Paragraph G below.

(3) In case the Company shall at any time issue in exchange for shares of its Common Stock theretofore issued and outstanding a smaller number of shares of Common Stock, the warrant price then in effect shall be increased and the number of shares of Common Stock purchasable under the Warrants shall be decreased correspondingly, and in all subsequent calculations under this Paragraph C there shall be subtracted from the divisor above mentioned a sum equal to the number of shares by which the issued and outstanding shares shall be reduced upon such exchange.

(4) In case the Company shall in any manner grant or offer any rights to subscribe for or to purchase Common Stock of the Company, or grant or offer any options for the purchase of its Common Stock, any adjustment required to be made in accordance with the provisions hereof in the warrant price and in the number of shares purchasable under the Warrants

on account of the issue of such Common Stock shall be made only as of the close of business on the day on which such subscription rights or options shall expire; provided, however, that if such subscription rights or options shall continue in effect for a longer period than six months from the date when the same were granted or offered, any such adjustment shall be made only as of the close of business June 30 and December 31 in each calendar year, in respect of the shares of Common Stock issued during the preceding six months upon the exercise of such rights or options, and as of the close of business on the day upon which such subscription rights or options shall expire, in respect of the shares of Common Stock so issued between the close of business on the preceding June 30 or December 31, as the case may be, and the close of business on the day upon which such subscription rights or options shall expire.

(5) In case the Company shall in any manner issue or sell obligations or stock convertible into or exchangeable for Common Stock of the Company, then all shares of Common Stock issued upon the conversion of or in exchange for such obligations or stock shall be deemed to be "additional shares", and the amount of money in dollars, or the fair value in dollars of the property or other consideration, if any, received by the Company in consideration for the issue or sale of such obligations or stock shall be deemed to be the consideration received for the issue or sale of such Common Stock; and any adjustment required to be made in accordance with the provisions hereof in the warrant price and in the number of shares purchasable under the Warrants by reason of the issue of such Common Stock shall be made only as of the close of business June 30 and December 31 in each calendar year, in respect of the shares of Common Stock issued during the preceding six months upon the conversion of or in exchange for such obligations or stock, and as of the close of business on the day upon which such right of conversion or exchange shall expire, in respect of the shares of Common Stock so issued between the close of business on the preceding June 30 or December 31, as the case may be, and the close of business on the day upon which such right of conversion or exchange shall expire.

(6) In determining the amount received by the Company upon the issue of "additional shares", such determination shall

be made without the deduction of any commission, discount or expenses paid for underwriting or marketing, or in connection with the sale thereof.

(7) In case the Company shall issue any "additional shares" for property or services, the value of such property or services shall, for the purposes hereof, be conclusively determined by the Board of Directors of the Company.

D. If and whenever, prior to the exercise or expiration of all purchase rights represented by any Warrants at any time issued, the Company shall pay any dividend of cash or assets or make any other distribution of cash or assets to the holders of its Common Stock in an amount exceeding the earned surplus of the Company as hereinafter defined at the time of the declaration of such dividend or distribution, the warrant price shall thereupon be reduced by the amount by which such dividend or other distribution paid upon one share of Common Stock exceeds the ratable portion of such earned surplus applicable to one share of Common Stock at the time of the payment of such dividend or other distribution; provided, however, that the number of shares of Common Stock purchasable under the Warrants shall not be changed by reason of such dividend or distribution. In case of any reduction of the warrant price pursuant to this Paragraph D, a similar reduction shall be made in the Base Price in all subsequent calculations. The value of any assets (other than cash) distributed to the holders of Common Stock shall, for the purposes of this Paragraph D, be conclusively determined by the Board of Directors of the Company.

E. If, at any time prior to the exercise or expiration of all purchase rights represented by any Warrants at any time issued, the Company shall be consolidated with or merged into any other corporation or corporations, or shall sell, for securities or partly for cash and partly for securities, all or substantially all of its property, assets, business and good-will, as an entirety, to another corporation or corporations, lawful provision shall be made, as part of the terms of any such consolidation, merger or sale, whereby the holder of each Warrant shall thereafter be entitled to purchase, in lieu of each share of the Common Stock of the Company otherwise purchasable upon the exercise of such Warrant, but at the warrant price in effect at the time of such consolidation, merger or sale (sub-

ject to reduction as hereinafter provided) the same kind and amount of securities (including in such term stock of any class or classes) as may be issuable or distributable upon such consolidation, merger or sale with respect to each share of Common Stock; provided, however, that the warrant price shall be reduced by the amount of any cash distributable or payable upon any such consolidation, merger or sale with respect to each share of Common Stock in excess of the ratable portion of the earned surplus of the Company as hereinafter defined at the time of such consolidation, merger or sale applicable to one share of Common Stock. Lawful provision having been so made, from and after such consolidation, merger or sale, all rights of the holders of Warrants shall cease and determine (including the right to purchase shares of the Common Stock and all rights with respect to further adjustments of the warrant price and the number of shares of Common Stock purchasable upon the exercise thereof) except the right to purchase during the life of the Warrants such securities as above provided as such securities may from time to time be constituted.

F. If the number of shares of Common Stock purchasable upon the exercise of the Warrants shall be required to be increased or decreased and the warrant price required to be adjusted, or securities other than shares of the Common Stock shall become purchasable in lieu of shares of the Common Stock upon exercise of the Warrants then, in each case, the Company shall forthwith

(1) file with the Warrant Agent a certificate executed by the President or a Vice-President and attested by the Secretary or an Assistant Secretary of the Company, stating the increased or decreased number of shares of Common Stock, and the adjusted warrant price per share, or specifying the kind and amount of securities, so purchasable under the Warrants, and setting forth in reasonable detail the method of calculation and the facts (including the amount of money in dollars, or the fair value in dollars of the property or other consideration, if any, received or deemed to have been received for any "additional shares" or convertible securities) upon which such calculation is based; and

(2) cause a notice stating the fact of such increase or decrease in the number of shares so purchasable and

the adjusted warrant price per share, or the fact that such kind and amount of securities are purchasable in lieu of each share of Common Stock, to be published at least once a week for two consecutive weeks in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York.

G. The term "earned surplus of the Company" as used herein shall be deemed to mean the aggregate amount of the consolidated net earnings and income of the Company and of its subsidiary companies from the organization of the Company to the date as of which the amount of its earned surplus shall be determined (after deducting (a) interest, including interest on the outstanding Income Mortgage Bonds of the Company for the years ending March 31, 1937 and March 31, 1938, at the rate of not exceeding 5% per annum to the extent that such interest shall be earned in the calendar years 1936 and 1937, respectively, as provided in the Income Mortgage, and interest from April 1, 1938 at the rate of 5% per annum, (b) all losses and other proper charges against earnings and income, and (c) all dividends or other distributions of cash or assets to stockholders, including all stock dividends in respect of which no adjustment is to be made in respect of the warrant price or in the number of shares purchasable under the Warrants as hereinabove in Paragraph C (1) provided, any shares issued as such stock dividends to be taken for the purpose of such deduction at an amount equal to the warrant price in effect at the time such shares were issued), but excluding all stock dividends in respect of which an adjustment is to be made in respect of the warrant price or in the number of shares purchasable under the Warrants as hereinabove in Paragraph C provided, and excluding all dividends of cash or assets or other distributions of cash or assets to stockholders in respect of which an adjustment is to be made in respect of the warrant price as hereinabove in Paragraph D provided. The term "subsidiary company" shall mean any corporation, ninety per cent. or more of whose capital stock entitled to vote for the election of directors shall be owned by the Company, or by one or more of its subsidiary companies, or by the Company and one or more of its subsidiary companies.

H. In the event that a meeting of stockholders shall be

called to consider and take action on a proposal for the voluntary dissolution of the Company, other than in connection with a consolidation, merger of sale of all, or substantially all, of its property, assets, business and good will as an entirety, then and in that event the Company shall cause a notice thereof to be published at least once a week for two consecutive weeks in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York, such publication to be completed at least twenty days prior to the date fixed as a record date or the date of closing the transfer books for the determination of the stockholders entitled to vote at such meeting. If such notice shall have been so given and if such a voluntary dissolution shall be authorized at such meeting or any adjournment thereof, then from and after the date on which such voluntary dissolution shall have been duly authorized by the stockholders, the purchase rights represented by the Warrants and all other rights with respect thereto shall cease and determine.

Exhibit E.

In the District Court of the United States
for the District of Colorado

In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors.	In Proceedings for Reorganization. Consolidated Cause No. 8081

Order on Proposal of Plan of Reorganization.

This cause coming on to be heard at this time pursuant to an order entered herein on March 12, 1935, and notice of this hearing having been given to the creditors and stockholders of The Colorado Fuel and Iron Company (hereinafter called the Present Company) and The Colorado Industrial Company (hereinafter called the Industrial Company) and other interested parties in the manner provided in said order, and the

Present Company and the Industrial Company having proposed the "Plan of Reorganization of The Colorado Fuel and Iron Company (and The Colorado Industrial Company) dated March 1, 1935" (hereinafter called the Plan), and the Court having considered the Plan and having heard the arguments of counsel and being fully advised in the premises, and good cause appearing therefor, it is

Found, Adjudged and Decreed That

First: The Plan complies with the provisions of subdivision (b) of Section 77B of the Bankruptcy Act, and has been duly proposed in accordance with the provisions of subdivision (d) of said Section 77B.

Second: Unless otherwise ordered by the Court, it shall not be requisite to the confirmation of the Plan that it be accepted (1) by the holders of the following claims (which are not affected by the Plan in that appropriate provision is made in the Plan either for the payment of such claims in cash in full or the assumption thereof by the new corporation to be organized in pursuance of the Plan, to the extent that such claims shall not have been paid):

(a) The Colorado Fuel and Iron Company General Mortgage 5% Bonds, due February 1, 1943, of which $4,500,000 principal amount are outstanding in the hands of the public and $599,000 principal amount are owned by the Present Company and are deposited with the Industrial Commission of Colorado to secure payments under the Colorado Workmen's Compensation Act;

(b) Claims of the United States of America and the State of Colorado;

(c) Workmen's Compensation claims;

(d) Obligations of Arthur Roeder as Receiver in the receivership proceeding entitled "Bankers Trust Company, Trustee, Complainant, vs. The Colorado Fuel and Iron Company, Defendant, in Equity No. 10179" or in the consolidated cause entitled "The New York Trust Company, as Trustee, Complainant, vs. The Colorado Fuel and Iron Company et al., Defendants, in Equity No. 10210" and as Trustee of the estates of the Debtor herein;

(e) Obligations of the Present Company to its subsidiaries;

(f) Current liabilities of the Present Company incurred in the ordinary conduct of its business prior to the appointment of said receiver for the Present Company on August 1, 1933; and

(g) Claims, as adjusted or liquidated and allowed by the Court, arising from the disaffirmance of contracts by Arthur Roeder as Receiver or Trustee as aforesaid;

or (2) by the holders of other liabilities, liens or encumbrances, if any (other than those referred to in paragraph Third of this order), in respect of which proofs of claims are filed in accordance with the order of this Court dated March 12, 1935 (which are not affected by the Plan in that the Plan provides that any such claims may be adjudged or compromised and dealt with or paid or discharged by the new corporation to be organized in pursuance of the Plan or that the property may be transferred to such new corporation subject to any such liens or encumbrances).

Third: For the purposes of the Plan and its acceptance, the creditors and stockholders of the Present Company and the Industrial Company whose claims and interests are affected by the Plan are the following who are hereby divided into the following classes according to the nature of their respective claims and interests:

Class I—The holders of The Colorado Industrial Company First Mortgage 5% Gold Bonds, due August 1, 1934 (hereinafter called the Industrial Bonds), which are guaranteed by the Present Company. $27,633,000 principal amount of Industrial Bonds are outstanding in the hands of the public (exclusive of $7,741,000 principal amount of Industrial Bonds which are owned by the Present Company and, together with all the capital stock of the Industrial Company which is also owned by the Present Company, are to be cancelled under the Plan in the reorganization);

Class II—The holders of the 8% Cumulative Preferred Stock ($100 par value) of the Present Company (hereinafter called the Preferred Stock) of which 20,000 shares are outstanding in the hands of the public; and

Class III—The holders of the Common Stock without par value of the Present Company (hereinafter called the Common Stock) of which 340,505 shares are outstanding in the hands of the public.

Fourth: The claims and interests of the holders of the Industrial Bonds and of Preferred Stock and of Common Stock may be filed or evidenced, and when so filed or evidenced shall be deemed allowed, for the purpose of the acceptance of the Plan, and such holders of Industrial Bonds and Preferred Stock and Common Stock, as required by said Section 77B, may evidence their acceptance of the Plan, subject to the provisions of Paragraph Sixth of this order, in the following manner:

(a) In the case of holders of Industrial Bonds in registered form, by the filing herein of a written statement substantially in the form annexed hereto as Exhibit A, signed by the registered holder of such Bond or Bonds on the record date fixed as provided in paragraph Fifth below;

(b) In the case of holders of Industrial Bonds in bearer form, by the filing herein of a written statement substantially in the form annexed hereto as Exhibit B signed by the owner of such Bond or Bonds, accompanied by the certificate of any bank or trust company which is a member of the Federal Reserve System certifying that such Bond or Bonds are held by it for the account of such owner;

(c) In the case of holders of Preferred Stock, by the filing herein of a written statement substantially in the form annexed hereto as Exhibit C signed by the holders of record of such stock on the record date fixed as provided in paragraph Fifth below; and

(d) In the case of holders of Common Stock, by the filing herein of a written statement substantially in the form annexed hereto as Exhibit D signed by the holders of record of such stock on the record date fixed as provided in paragraph Fifth below.

Any written acceptance of the Plan shall be revocable up to the date of the hearing on confirmation of the Plan by filing written notice of such revocation with the Trustee, signed and acknowledged by the owner at the time of such revocation of

the bonds or stock in respect of which such acceptance was given.

Fifth: The close of business May 25, 1935 is hereby fixed as the record date for the determination of (a) the holders of Industrial Bonds in registered form and (b) the holders of the Preferred Stock and the holders of Common Stock of the Present Company for the purpose of the acceptance of the Plan and its confirmation by the Court, and the holders of registered Industrial Bonds and the holders of Preferred Stock and the holders of Common Stock on such record date, as evidenced by the bond registry and by the stock books of the Present Company shall, subject to the provisions of paragraph Sixth of this order, be deemed to be, respectively, the holders of such registered Industrial Bonds and the holders of Preferred Stock and the holders of Common Stock for the purpose of the acceptance of the Plan and of its confirmation by the Court.

Sixth: Notwithstanding the foregoing provisions of paragraphs Fourth and Fifth of this order,

(a) the claim of any holder of Industrial Bonds, whether or not registered in the name of such holder on the record date fixed as hereinabove provided, and whether or not a written acceptance of the Plan shall have theretofore been signed in respect of such bonds, may be filed, and when so filed shall be deemed allowed, for the purpose of the acceptance of the Plan or of being heard thereon, by the presentation to the Court at the hearing on confirmation of the Plan of such Bonds or of a certificate of any bank or trust company which is a member of the Federal Reserve System certifying that such bonds are held by it for the account of such holder, and in respect of any such bonds the action of such holder rather than the action of the registered holder on the record date or of the person who may theretofore have signed a written acceptance of the Plan shall govern for the purpose of acceptance of the Plan; and

(b) the interest of any stockholder, whether or not the registered holder on the record date fixed as hereinabove provided, and whether or not a written acceptance of the Plan shall have heretofore been signed in

respect of the stock held by him, may be evidenced, and when so evidenced shall be deemed allowed, for the purpose of acceptance of the Plan or of being heard thereon, by the presentation to the Court at the hearing on confirmation of the Plan of the certificates representing the stock held by him, and in respect of such stock the action of such holder rather than the action of the registered holder on the record date or of the person who may theretofore have signed a written acceptance of the Plan shall govern for the purpose of acceptance of the Plan.

Seventh: Said Trustee, the Present Company, the Industrial Company, the Reorganization Managers, the Industrial Committee, or the Stockholders Committee referred to in the Plan may apply to the Court at any time hereafter to fix a date for a hearing on the confirmation of the Plan, notice of such hearing to be given in accordance with Article XI of the Plan.

Eighth: The Plan shall be submitted to the creditors and stockholders of the Present Company and the Industrial Company for their consideration in the following manner:

(a) Said Trustee shall publish a notice substantially in the form annexed hereto marked Exhibit E once a week for two successive weeks in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York, the first publication to be not later than May 11, 1935; and such publication shall be good and sufficient notice to all creditors of the Present Company and the Industrial Company, all stockholders of the Present Company and other parties in interest of this order and of the proposal of the Plan as aforesaid.

(b) Said Trustee shall also on or before June 1, 1935 mail, or cause to be mailed, a copy of said notice, together with a copy of the Plan, postage prepaid, to each holder of Fuel Bonds and Industrial Bonds and each other creditor of the Present Company and of the Industrial Company, insofar as their respective addresses shall be known to said Trustee, and to each registered holder of Industrial Bonds and each record stockholder

of the Present Company appearing as such at the close of business on May 25, 1935, at their respective addresses as the same shall appear on the bond registry or the stock books of the Present Company, as the case may be; and from time to time thereafter and until otherwise ordered by the Court, the Trustee shall mail or cause to be mailed copies of said notice and the Plan to each person, who, subsequent to May 25, 1935, becomes a holder of record of registered Industrial Bonds or of stock of the Present Company. Said Trustee shall also mail or cause to be mailed, together with copies of the Plan as above directed, forms of acceptance of the Plan; substantially in the form annexed hereto as Exhibit A to holders of Industrial Bonds in registered form; substantially in the form annexed hereto as Exhibit B to holders of the Industrial Bonds in bearer form; substantially in the form annexed hereto as Exhibit C to holders of the Preferred Stock; and substantially in the form annexed hereto as Exhibit D to the holders of the Common Stock.

Ninth: Said Trustee shall pay the expenses of the publication, printing and mailing of the notice of this order hereinabove directed and also the cost of printing and mailing the Plan and the forms for its acceptance by creditors and stockholders affected thereby. Said Trustee shall also pay compensation to banks and trust companies certifying acceptances of the Plan signed by owners of Industrial Bonds in bearer form, at the following rates:

for receiving and redelivering bonds:

(a) Blocks over $1,000,000, 60¢ for each piece received;
(b) Blocks over $500,000 and up to $1,000,000, 75¢ for each piece received;
(c) Blocks over $100,000 and up to $500,000, $1.00 for each piece received;
(d) Blocks of $100,000 and under, $1.20 for each piece received.

plus any disbursements for postage and insurance incident to the shipment of securities.

Tenth: The Court reserves for final determination here-

after all questions with respect to whether the Plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders and is feasible, and nothing contained in this order shall be deemed to prejudice the determination of any such questions. The Court also reserves for future determination all questions relating to the manner in which holders of securities affected by the plan may participate therein upon confirmation of the Plan by the Court, and all other questions relating to matters not expresaly provided for in this order, as to which, under the Plan or said Section 77B, the approval or determination of the Court is required.

Dated, May 1st, 1935.

J. FOSTER SYMES,
Judge.

Filed May 1, 1935, 5:40 P. M. Charles W. Bishop, Clerk.

Exhibit F.

Exhibit A. In the District Court of the United States
For the District of Colorado

Form of Acceptance for Bonds in Registered Form.

(N. B. This white counterpart is to be forwarded immediately to J. & W. Seligman & Co., 54 Wall Street, New York City, in accordance with the instructions below.)

In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors.	Acceptance No..... In Proceedings for Reorganization Consolidated Cause No. 8081

Approval and Acceptance of Plan of Reorganization.

The undersigned, the registered owner of $..... principal amount of First Mortgage 5% Gold Bonds of The Colorado Industrial Company (guaranteed by The Colorado Fuel and Iron Company), bearing the following serial numbers:

.....

.....

Hereby Accepts and Approves the "Plan of Reorganization of The Colorado Fuel and Iron Company (and The Colorado Industrial Company) dated March 1, 1935" heretofore proposed in the above proceedings, a copy of which Plan has been received by the undersigned, And Authorizes Messrs. J. & W. Seligman & Co., the Reorganization Managers named in said Plan, on behalf of the undersigned in accordance with Article XII of said Plan, to file this acceptance with the Court at such time as said Reorganization Managers shall in their discretion determine and to carry said Plan into effect subject to the provisions of Section 77B of the Bankruptcy Act.

In Witness Whereof, the undersigned has executed this instrument this day of , 1935.

Signature Guaranteed:

(Sign here).....[L. S.]
(signature of owner)

.....
(name of bank, trust company or New York Stock Exchange firm)

.....
(Please also print or typewrite owner's name appearing above and address)

by.....
(official title)

Instructions.

This form of acceptance is for use by holders of bonds in Registered Form. It should be filled in and signed In Duplicate.

The Original (white copy) of this form of acceptance of the Plan should be forwarded to Messrs. J. & W. Seligman & Co., the Reorganization Managers named in the Plan, 54 Wall Street, New York, N. Y.

The Duplicate counterpart (green copy) is to be retained by the bondholder.

The signature of the bondholder executing the acceptance must correspond with the name in which the bonds are registered in every particular without alteration or enlargement,

or any change whatever, and must be guaranteed by a New York bank or trust company, or by a bank or trust company having a New York office or correspondent, or by a firm having a membership in the New York Stock Exchange.

If such form of acceptance is executed by a trustee, attorney, executor, administrator, guardian, officer of a corporation or any other person acting in any other representative character, proper evidence of the authority of such person to act must accompany the acceptance.

Note: This form of acceptance has been approved by the District Court of the United States for the District of Colorado by order dated May 1, 1935. Subject to the provisions of said order, when this acceptance has been filed with said Court, the claim represented by the above bonds will be deemed to have been filed and allowed for the purpose of the acceptance of the Plan.

This acceptance of the Plan is revocable up to the date of the hearing on confirmation of the Plan by the Court, by filing written notice of such revocation with the Trustee of the Estate of The Colorado Fuel and Iron Company, Continental Oil Building, Denver, Colorado, signed and acknowledged by the owner at the time of such revocation of the bonds described above.

When the Plan is confirmed, notice of such fact and appropriate instructions with regard to the surrender of bonds in exchange for the new securities will be given to all bondholders.

Exhibit G.

Exhibit B. In the District Court of the United States for the District of Colorado

Form of Acceptance for Bonds in Bearer Form

(N. B. This white counterpart is to be forwarded immediately to J. & W. Seligman & Co., 54 Wall Street, New York City, in accordance with the instructions on the reverse.)

In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors.	Acceptance No..... In Proceedings for Reorganization Consolidated Cause No. 8081

Approval and Acceptance of Plan of Reorganization

The undersigned, the owner of $.....principal amount of First Mortgage 5% Gold Bonds of The Colorado Industrial Company (guaranteed by The Colorado Fuel and Iron Company) bearing all coupons thereto appertaining maturing on and after August 1, 1933, and being bonds bearing the same serial numbers shown in the certificate below, hereby accepts and approves the "Plan of Reorganization of The Colorado Fuel and Iron Company (and The Colorado Industrial Company) dated March 1, 1935", heretofore proposed in the above proceedings, a copy of which Plan has been received by the undersigned, and authorizes Messrs. J. & W. Seligman & Co., the Reorganization Managers named in said Plan, on behalf of the undersigned in accordance with Article XII of said Plan, to file this acceptance with the Court at such time as said Reorganization Managers shall in their discretion determine and to carry said Plan into effect subject to the provisions of Section 77B of the Bankruptcy Act.

In Witness Whereof, the undersigned has executed this instrument this day of , 1935.

Signature guaranteed:

(Sign here).....[L. S.]
(signature of owner)

.....
(Name of bank or trust company)

.....
(Please also print or typewrite owner's name appearing above and address)

by..... .....
(official title)

Certificate of Bank or Trust Company

The undersigned hereby certifies that it is a member of the Federal Reserve System and that it holds for the account of the above named.....
(Name of owner of Bonds)

$ principal amount of The Colorado Industrial First Mortgage 5% Gold Bonds (bearing thereon the written guarantee of The Colorado Fuel and Iron Company), bearing all coupons thereto appertaining maturing on and after August 1, 1933, numbered as follows:

@ $500, Numbers .....

.....

@ $1000, Numbers .....

.....

.....

(If bonds are held subject to pledge, certifying Bank or Trust Company may indicate this fact in the above space)

Upon written request from J. & W. Seligman & Co., 54 Wall Street, New York City, the Reorganization Managers named in the above mentioned Plan, the undersigned agrees that it will notify such Reorganization Managers whether or not it continues to hold the above bonds for the account of the owner named above.

Dated , 1935.

.....
(Name of bank or trust company)

by .....
Authorized Officer.

Exhibit H.

In the District Court of the United States
For the District of Colorado

In the Matter of The Colorado Fuel and Iron Company, and Another, Colorado corporations. Debtors.	In Proceedings for Reorganization Consolidated Cause No. 8081.

Findings of Fact and Conclusions of Law

Order Confirming Plan of Reorganization

Findings of Fact

This Cause came on to be heard on March 12, 1936 pursuant to an order of this Court dated January 27, 1936 entered herein on application of the Debtors for a hearing on confirmation of the Plan of Reorganization of The Colorado Fuel and Iron Company and The Colorado Industrial Company, dated March 1, 1935, filed herein March 12, 1935, and found by this Court, by order dated May 1, 1935, to have been duly proposed in accordance with the provisions of Section 77B of the Act entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898, as amended, (hereinafter referred to as "Section 77B").

At said hearing the following appeared:

Central Hanover Bank and Trust Company, Trustee under the General Mortgage, dated February 1, 1893, of The Colorado Fuel and Iron Company, by its counsel, Lewis and Grant.

The New York Trust Company, Trustee under the first mortgage, dated August 1, 1904, of The Colorado Industrial Company, by Grant, Ellis, Shaffroth & Toll and White & Case, its counsel.

The Colorado Fuel and Iron Company, (hereinafter called the "Fuel and Iron Company"), and The Colorado Industrial Company, (hereinafter called

the "Industrial Company"), by their counsel, Adams & Gast.

Arthur Roeder, Trustee of The Colorado Fuel and Iron Company and The Colorado Industrial Company, by his counsel, Fred Farrar.

J. & W. Seligman & Co., Reorganization Managers under the Plan of Reorganization, by Cravath, de Gersdorff, Swaine & Wood, their counsel.

Carl J. Schmidlapp, Bertram Cutler, John Evans, Frank Miller Gould, R. G. Page and John D. Rockefeller, 3rd, as the Protective Committee for the First Mortgage 5% Bonds of the Industrial Company, by their counsel, Milbank, Tweed, Hope & Webb.

Thatcher M. Brown, Harold Kountze, James B. Mabon and John C. Traphagen, as the Committee representing the General Mortgage 5% Bonds of the Fuel and Iron Company, by their counsel, Hodges, Wilson and Vidal.

Grayson M. P. Murphy, John W. Hanes, Andrew V. Stout and T. Johnson Ward, as the Protective Committee for the Preferred and Common Stock of the Fuel and Iron Company by their counsel, Cotton, Franklin, Wright & Gordon.

M. C. Zaidenberg, Louis Kalischer and Benjamin H. Roth, as the "Independent Committee" of bondholders, by Northcutt & Northcutt and Nevius, Brett & Kellogg, their counsel.

J. C. Adams, a holder of common stock of the Fuel and Iron Company, in person and by Parriott & Cranston, his counsel.

Cass M. Herrington, as special counsel appointed by the Court.

Said cause having been continued to this date, and upon consideration of the evidence and testimony taken in open Court and upon all the exhibits and other proofs offered in evidence in this cause, and all the files, papers, reports, petitions and orders and proceedings herein and the arguments of counsel,

The Court finds:

That at the time of the institution of these proceedings and since August 1, 1933, the properties of the Fuel and Iron

Company had been in possession of Arthur Roeder, as Receiver appointed by this Court in Receivership Proceedings pending in this Court, and by the United States District Court for the District of Wyoming in Ancillary Proceedings; the proceedings in this Court being cause entitled "Bankers Trust Company, Trustee, Complainant, vs. The Colorado Fuel and Iron Company, Defendant, in Equity No. 10179", and consolidated cause entitled "The New York Trust Company, as Trustee, Complainant, vs. The Colorado Fuel and Iron Company, a Corporation, et al, Defendants, in Equity No. 10210" (hereinafter referred to as the "prior receivership proceedings").

That upon the inception of these proceedings and on August 1, 1934, said Arthur Roeder was, by order of this Court, temporarily appointed Trustee of the estate of the Fuel and Iron Company with the title and powers as specified in said order. On September 15, 1934, by order of this Court, after hearing before a Special Master, the appointment of Arthur Roeder as Trustee of the estate of the Fuel and Iron Company was made permanent and Arthur Roeder was also appointed permanent Trustee of the estate of the Industrial Company, and all the powers and duties conferred on said temporary Trustee by order dated August 1, 1934 were confirmed and continued in force and effect, except as modified. That Arthur Roeder (hereinafter referred to as the "Trustee") qualified as Trustee of the estates of the Fuel and Iron Company and the Industrial Company and since the entry of said orders has been and now is the duly appointed, qualified and acting Trustee of the estates of said Companies, (hereinafter referred to as the "Debtors"), and as Trustee, said Arthur Roeder has managed, operated and conducted the business and affairs of said Debtors.

That both The Colorado Fuel and Iron Company and The Colorado Industrial Company, Debtors, are corporations organized and existing under the laws of the State of Colorado and the principal place of business, as well as the principal assets of both Debtors are and for many years have been within the State of Colorado.

That the nature of the business of the Fuel and Iron Company is mainly the manufacture and sale of steel and iron products; the mining and sale of coal; the manufacture and

sale of coke and by-products of the manufacture of coke; and the mining of iron ore and other raw materials used in the manufacture of iron and steel. That said Company also owns the stocks and bonds of certain subsidiary companies, including all of the stock of the Industrial Company, That the Industrial Company is not engaged in any active business and does not own any assets of substantial value, having transferred substantially all of its assets to the Fuel and Iron Company in the year 1913. That neither the Fuel and Iron Company nor the Industrial Company is a utility or a utility corporation subject to regulatory authority under the laws of the State or States in which any properties of either of the Debtors are situated or operated.

That notice of the time and manner of filing claims and demands against said Debtors (other than claims in respect of the General Mortgage 5% Bonds of the Fuel and Iron Company and the First Mortgage 5% Bonds of the Industrial Company, and the coupons appurtenant to such bonds, and the claims of the Trustees under the mortgages securing such bonds), pursuant to order of this Court entered August 1, 1933 in the prior receivership proceedings, was duly given by the Receiver. That thereafter the time for filing such claims and demands was, by order of this Court, extended to and including April 15, 1934. That pursuant to orders entered from time to time in the prior receivership proceedings and in these proceedings, the Receiver or the Trustee has paid all claims and demands so filed with him which were approved by the Receiver and allowed by this Court. That certain claims so filed with the Receiver were not approved by him.

That by order dated September 15, 1934, it was provided that all claims and demands (other than claims of stockholders and bondholders) filed with the Receiver in the prior receivership proceedings and not approved by the Receiver were transferred to this cause and considered as claims against the Debtor or Debtors in these proceedings without the necessity of filing new or additional claims. That all claims filed with the Receiver in the prior receivership proceedings which were not approved by the Receiver, have been disallowed by order of this Court either in the prior receivership proceedings or in these proceedings and none of such claims

are now pending, except the claim of Electrical Products Consolidated, in the sum of $3,600.00, which is now in litigation.

That by an order entered in these proceedings on March 12, 1935, it was provided that all claims and demands against said Debtors, except

> (1) the claims of holders of General Mortgage 5% Bonds of the Fuel and Iron Company and of holders of First Mortgage 5% Bonds of the Industrial Company, or of interest appertaining to said bonds, and of the Trustees under the mortgages securing said bonds,
>
> (2) such claims as had been theretofore properly filed with and disapproved by the Receiver in the prior receivership proceedings, and
>
> (3) claims arising out of or pertaining to the management of or the conduct of the ordinary business and operations of the Fuel and Iron Company by Arthur Roeder as Receiver or Trustee thereof.

should be presented to the Trustee on or before April 25, 1935, or thereafter, except upon further order of this Court for cause shown, be barred from participating in any Plan of Reorganization of the Fuel and Iron Company and the Industrial Company, and that upon the entry of any final order or decree herein confirming any Plan of Reorganization for said Debtors, such claims or demands not so presented should, except as otherwise ordered by Court for cause shown, be forever discharged and that the holders of such claims and demands be forever barred from asserting such claims or demands against the Debtors, the Receiver or the Trustee, or against any property then or thereafter in the estates of the Debtors or either of them. That notice of such order was duly given by the Trustee to creditors by publication and mailing, as directed in said order. That all claims and demands filed pursuant to said order have been adjusted and paid.

That at the date hereof there are outstanding in the hands of the public, $4,483,000 principal amount face value of bonds of the Fuel and Iron Company, dated February 1, 1893, due February 1, 1943, generally known as General Mortgage 5% Bonds of the Fuel and Iron Company, secured by a mortgage or deed of trust of the Fuel and Iron Company dated Febru-

ary 1, 1893, and supplements thereto. That in addition to said $4,483,000 of said bonds outstanding, $599,000 of such bonds owned by the Fuel and Iron Company (together with $100,000 principal amount of United States 3% Treasury Bonds) are deposited in trust, pursuant to an arrangement with the Industrial Commission of the State of Colorado, as security for the payment of workmen's compensation awarded and to be awarded under the law of the State of Colorado against the Fuel and Iron Company, the Receiver or the Trustee thereof.

That at the date hereof $27,633,000 principal amount face value of bonds of the Industrial Company, dated August 1, 1904, and which matured August 1, 1934, generally known as the First Mortgage 5% Bonds of the Industrial Company secured by a mortgage or deed of trust of the Industrial Company dated August 1, 1904, and supplements thereto, are outstanding in the hands of the public, and in addition thereto $7,741,000 principal amount are owned by the Fuel and Iron Company. That no interest has been paid on said Industrial Bonds since the installment due February 1, 1933, that is, the August 1, 1933 and subsequent interest installments have not been paid. That the interest accrued and unpaid on said Industrial Bonds at the rate therein expressed, as of March 10, 1936, is $4,298,466.67. That the said Industrial Bonds are guaranteed both as to principal and interest by the Fuel and Iron Company.

That on August 1, 1934, the date upon which these proceedings were instituted by petitions filed herein by said Debtors, said Debtors were in default in the payment of three semi-annual installments of interest due on said Industrial Bonds and said Debtors and each of them was on that date and at all times since has been unable to meet its debts as they matured.

That there are outstanding in the hands of the public 20,000 shares of 8% cumulative preferred stock, par value $100 per share, of the Fuel and Iron Company.

That there are outstanding in the hands of the public 340,505 shares of common stock, without par value, of the Fuel and Iron Company.

That all of the stock, that is 200 shares, all common stock,

par value $100, of the Industrial Company, is owned by the Fuel and Iron Company.

That lists and statements showing the amount of the outstanding bonds and stock of the Debtors were, pursuant to order of Court, filed in these proceedings by the Trustee on October 31, 1934, modified as to the General Bonds of the Fuel and Iron Company by subsequent reductions from the application of sinking funds and as shown by the Interim Report of the Trustee filed herein March 12, 1936.

That pursuant to orders of this Court entered from time to time in the prior receivership proceedings and in these proceedings, the Receiver or the Trustee has paid, as it matured, all interest upon the General 5% Bonds of the Fuel and Iron Company outstanding in the hands of the public.

That said order of May 1, 1935, provided that claims and interests of the holders of Industrial Bonds and Preferred Stock and Common Stock might be filed or evidenced, and when so filed or evidenced shall be deemed allowed, for the purpose of the acceptance of the Plan, and such holders of Industrial Bonds and Preferred Stock and Common Stock, as required by Section 77B, may evidence their acceptance of the Plan, by filing in these proceedings written acceptances in substantially the respective forms annexed to said order dated May 1, 1935, such forms of acceptance, in the case of Industrial Bonds in bearer form, to be signed by the owners thereof and certified by a bank or trust company which is a member of the Federal Reserve System holding custody thereof, and, in the case of registered securities, to be signed by holders of record as of the close of business May 25, 1935 of Industrial Bonds in registered form and by holders of record as of the close of business May 25, 1935 of Preferred Stock and Common Stock.

That J. & W. Seligman & Co., the Reorganization Managers named in the Plan, have filed in these proceedings, on behalf of holders of Industrial Bonds and Preferred Stock and Common Stock, written acceptances in form approved by said order dated May 1, 1935, duly executed by such holders, as follows:

	Total Maximum amount included in Class	Total amount covered by acceptances	Percentage covered by acceptances
Class I—Industrial Bonds	$27,633,000	$20,928,000	75.7%
Class II—Preferred Stock	20,000 shares	12,261 shares	61.3%
Class III—Common Stock	340,505 shares	181,174 shares	53.2%

That within the meaning of subdivision (e) of Section 77B, the Plan has been duly accepted in writing, and such acceptance has been duly filed in these proceedings, by or on behalf of creditors holding more than two-thirds in amount of the claims against the Debtors of each class whose claims have been allowed and are affected by the Plan and by or on behalf of stockholders holding more than a majority of the stock of the Fuel and Iron Company of each class.

That there has also been filed in these proceedings, and in the prior receivership proceedings, verified reports of the Receiver or the Trustee showing what contracts of the Debtors, executory in whole or in part, and what unexpired leases have been rejected and surrendered.

That on March 12, 1936, Trustee filed a verified statement showing that during the pendency of these proceedings, as well as during the prior receivership proceedings, the common and preferred stock of the Fuel and Iron Company, the General Mortgage 5% Bonds of the Fuel and Iron Company, and the First Mortgage 5% Bonds of the Industrial Company have been listed upon the New York Exchange and have been actively dealt in on that Exchange, and that a comparison of stock lists indicates that during a period commencing August 1, 1934 to and including February 24, 1936, 277,620 shares of the common stock and 18,232 shares of the preferred stock of the Fuel and Iron Company were transferred upon the books of the Company. That said Company has no record of the sales and transfers of either of said bonds.

That the Reorganization Managers have caused the New Company, provided for by the Plan, to be incorporated, under the laws of the State of Colorado, under the corporate name of The Colorado Fuel and Iron Corporation (hereinafter referred to as the "New Company"). A copy of the Certifi-

cate of Incorporation of the New Company has been made a part of the record in these proceedings. The form of such Certificate of Incorporation has been determined by the Reorganization Managers with the approval of the Committees as provided in, and complies in all respects with the provisions of, the Plan, and is hereby approved. The first Board of Directors of the New Company designated in the Plan have been duly named in said Certificate of Incorporation.

That the lands of the Debtors not essential to operations and other properties no longer profitably employed in the operations of the Fuel and Iron Company, referred to in subdivision 1 of Article VI of the Plan (and which are to be excluded from the lien of the Income Mortgage provided for in the Plan) have been tentatively selected by the Trustee, as set forth in his above-mentioned Interim Report.

That notices as required by law and the orders of Court entered from time to time in these proceedings, including notice of a hearing on March 12, 1936, on the confirmation of the Plan of Reorganization and other purposes, have been given by publication and mailing, as in said orders directed.

Conclusions of Law

This Court concludes as a matter of law that it has exclusive jurisdiction of each of the Debtors and of the property of each of said Debtors wherever located for the purposes of these proceedings under Section 77B.

That the Plan of Reorganization of The Colorado Fuel and Iron Company and The Colorado Industrial Company, dated March 1, 1935, filed herein on March 12, 1935, was duly proposed in accordance with the pertinent provisions of Section 77B.

That the only creditors and stockholders whose claims and interests are affected by the Plan of Reorganization are the following, who were by order heretofore entered in this proceeding divided into the classes indicated according to the nature of their respective claims and interests:

Class I—The holders of First Mortgage 5% Bonds of the Industrial Company, due August 1, 1934 (hereinafter called the Industrial Bonds), which are guaranteed by the Fuel and Iron Company. $27,633,000

principal amount of Industrial Bonds are outstanding in the hands of the public (exclusive of $7,741,000 principal amount of Industrial Bonds which are held in the estate of the Fuel and Iron Company and, together with all the capital stock of the Industrial Company which is held in the estate of the Fuel and Iron Company, are to be cancelled under the Plan in the reorganization);

Class II—The holders of the 8% Cumulative Preferred Stock ($100 par value) of the Fuel and Iron Company (hereinafter called the Preferred Stock) of which 20,000 shares are outstanding in the hands of the public; and

Class III—The holders of the Common Stock without par value of the Fuel and Iron Company (hereinafter called the Common Stock) of which 340,505 shares are outstanding in the hands of the public.

That the holders of any of the following claims are not affected by the Plan and it is not requisite to the consummation of the Plan that it be accepted by them, and that such claims may be adjusted or compromised and dealt with, paid or discharged, by the new corporation to be organized in pursuance of the Plan, unless otherwise paid or discharged by the Trustee, and that the property of the present corporation may be transferred to such new corporation subject to any lien or encumbrance relating to any of the said claims:

(a) the General Mortgage 5% Bonds of the Fuel and Iron Company, due February 1, 1943;

(b) claims of the United States of America and the State of Colorado;

(c) Workmen's Compensation claims;

(d) obligations of Arthur Roeder as Receiver in the prior receivership proceedings and as Trustee of the estates of the Debtors herein;

(e) obligations of the Fuel and Iron Company to its subsidiaries;

(f) current liabilities of the Fuel and Iron Company incurred in the ordinary conduct of its business prior to the appointment on August 1, 1933 of the receiver in the prior receivership proceedings; and

(g) claims, as adjusted or liquidated and allowed

by the Court, arising from the disaffirmance of contracts by Arthur Roeder as Receiver or Trustee as aforesaid.

That by order of this Court dated January 27, 1936, it was directed that a hearing be held before this Court on March 12, 1936, on the confirmation of the Plan and for the other purposes in said order specified. Notice of said hearing was duly given to creditors and stockholders by publication and mailing as provided in Section 77B and as directed in said order dated January 27, 1936. Said hearing was duly held and at said hearing the Debtors and all creditors and stockholders of the Debtors and all other interested parties had full opportunity to be heard upon the proposed confirmation of the Plan and upon all other questions specified in the notice of such hearing.

As to the aforesaid Plan of Reorganization of said Debtors, the Court is satisfied that:

(a) The Plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of the Debtors, and is feasible;

(b) The Plan complies with the provisions of subdivision (b) of Section 77B;

(c) The Plan has been accepted as required by the provisions of subdivision (e), clause (1) of Section 77B;

(d) The provisions of subdivision (e), clause (2) of Section 77B are not applicable;

(e) All amounts, to be paid by the Debtors, or by the New Company (the only corporation acquiring the Debtors' assets under the Plan), and all amounts to be paid to Committees or Reorganization Managers, whether or not by the Debtors or the New Company for services or expenses incident to the reorganization, have been fully disclosed and are reasonable, or are to be subject to the approval of this Court;

(f) The offer of the Plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act.

(g) The Debtors and the New Company (the only corporation issuing securities or acquiring property under the Plan) are authorized by their respective charters and by all applicable state or federal laws upon confirmation of the Plan, to take all action necessary to carry out the Plan.

The Court is satisfied that, by reason of the number of securities of the Debtors outstanding and the extent of the public dealing therein, the preparation of a statement showing what claims and shares of stock had been purchased or transferred by those accepting the Plan after the commencement or in contemplation of these proceedings, and the circumstances of such purchase or transfer, would be impracticable. No such statement need be filed.

That the tentative selection, as described by the Trustee in his Interim Report filed herein March 12, 1936, of lands not essential to the operations of the Fuel and Iron Company and all other properties no longer profitably employed in said operations, should be approved subject to the further approval by the Court of the lands finally selected and the legal descriptions thereof to be eliminated from the proposed Income Mortgage covering the properties of the New Company.

That the Certificate of Incorporation of the Colorado Fuel and Iron Corporation (the New Company) filed in the office of the Secretary of State of the State of Colorado on April 16, 1936, should be approved; and that said The Colorado Fuel and Iron Corporation (the New Company) is authorized by its charter and by applicable State and Federal laws upon confirmation of the Plan, to take all action necessary to carry out the Plan. Said New Corporation should be authorized to intervene and become a party to these proceedings.

That the Plan shall be binding upon each of the Debtors, all stockholders of each of the Debtors, including those who have accepted the Plan, as well as those who have not accepted it, and all creditors of each of the Debtors, secured or unsecured, whether or not affected by the Plan, and whether or not their claims have been filed in these proceedings, and, if so filed, whether or not approved and allowed, including creditors who have not accepted the Plan as well as those who have accepted it.

Notice having heretofore been given pursuant to an order dated March 12, 1935, requiring the claims of creditors (other than bondholders and other than creditors whose claims were filed in the prior receivership proceedings and disapproved by the Receiver) to be filed with the Trustee on or before April 25, 1935, all claims of such creditors not heretofore filed in these proceedings, should be finally barred and foreclosed, and no claim so barred or foreclosed should be enforced against the assets of the estate of either of the Debtors or against the New Company or against any assets, or any portion thereof, transferred, pursuant to the Plan, to the New Company, and no holder of any claim so barred or foreclosed should be entitled to any right whatsoever under the Plan, nor should any such claim be entitled to share in the distribution of any of the new securities provided for in the Plan.

No further filing or evidencing of the claims and interests of the holders of Industrial Bonds and Preferred and Common Stock should be required as a condition of their receiving the new securities provided for in the Plan, and, anything in any Order heretofore entered herein to the contrary notwithstanding, all holders of Industrial Bonds, Preferred Stock and Common Stock should be entitled to receive the new securities deliverable to such holders under the Plan, upon compliance with such reasonable regulations and instructions covering the endorsement and surrender of securities of the Debtors as the Reorganization Managers shall prescribe, or as the Court may order or approve.

April 25, 1936.

J. FOSTER SYMES, Judge.

Order Confirming Plan of Reorganization

This Cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed, as follows:

1. That the Certificate of Incorporation of The Colorado Fuel and Iron Corporation (in these proceedings designated as the "New Company") filed in the office of the Secretary of State of the State of Colorado on April 16, 1936, is hereby approved.

2. That the Plan of Reorganization of The Colorado Fuel

and Iron Company and The Colorado Industrial Company, dated March 1, 1935, filed herein March 12, 1935, is hereby confirmed and the Debtors, the Reorganization Managers, the Trustee, the New Company, and the New York Trust Company, as Trustee under the First Mortgage of The Colorado Industrial Company, dated August 1, 1904, are hereby authorized and directed to put into effect and to carry out said Plan of Reorganization in accordance with the provisions thereof, subject to such further orders as may hereafter be entered herein by this Court.

3. That the Plan and this Order shall be binding upon each of the Debtors, all stockholders of each of the Debtors, including those who have accepted the Plan, as well as those who have not accepted it, and all creditors of each of the Debtors, secured or unsecured, affected by the Plan, and whether or not their claims have been filed in these proceedings, and, if so filed, whether or not approved and allowed, including creditors who have not accepted the Plan as well as those who have accepted it.

4. That the claims of all creditors (except Bondholders and other creditors not affected by the Plan) which had not been filed with the Receiver in the prior receivership proceedings or with the Trustee in these proceedings on or before April 25, 1935, are finally barred and foreclosed and no claim so barred or foreclosed shall be enforced now or hereafter against the assets of the estate of either of said Debtors, nor against the New Company, nor against any assets transferred or conveyed, pursuant to the Plan and this Order, to the New Company, nor against any portion of said assets and no holder of any claim so barred or foreclosed shall be entitled to any right whatsoever under the Plan or this Order or be entitled to share in the distribution of any of the new securities provided for in the Plan.

5. No further filing or evidencing of the claims and interests of the holders of Industrial Bonds and Preferred Stock and Common Stock of The Colorado Fuel and Iron Company shall be required as a condition of their receiving the new securities provided for in the Plan, and, anything in this Order or in any Order heretofore entered herein to the contrary notwithstanding, all holders of Industrial Bonds and of said Preferred and Common Stock shall be entitled to receive

the new securities deliverable to such holders under the Plan, upon compliance with such reasonable regulations and surrender of securities of the Debtors as the Reorganization Managers shall prescribe, or as the Court may order or approve.

6. This Court hereby reserves and retains jurisdiction of these proceedings:

A. To approve the form of the new income mortgage, warrant agreement, instruments of conveyance and assumption and other documents necessary to carry the Plan into effect and to determine the manner in which and the time at which the new securities provided for in the Plan shall be distributed to holders of Industrial Bonds and Preferred Stock and Common Stock and generally to make such order or orders as by this Court may be deemed proper in connection with the transfer of the assets of the Debtors to the New Company and the issue of securities and assumption of obligations by the New Company.

B. Generally to determine any and all matters pertaining to these proceedings and to the Plan and not determined heretofore or by this Order and to make, from time to time, such further orders as to this Court may seem proper.

Any party to these proceedings or any creditor or stockholder of either of the Debtors or any other person whose rights are affected or determined by any of the provisions of this Order, including the Reorganization Managers and the New Company, may at any time apply to this Court for such orders and directions touching the matters hereby reserved or for such other and further relief as this Court may deem just and proper.

For further consideration of any or all of the matters reserved herein, this Court hereby sets this Cause for further hearing on Friday, May 22, 1936, at 10 o'clock A. M., and from time to time thereafter, as may be necessary and convenient, without further notice.

Dated April 25, 1936.

J. FOSTER SYMES, Judge.

Filed April 25, 1936, 11:55 A. M. Charles W. Bishop, Clerk.

United States of America, District of Colorado, ss.

I, Charles W. Bishop, Clerk of the United States District Court for the District of Colorado, do hereby certify that the foregoing is a true, complete and correct copy of Findings of Fact and Conclusions of Law and an Order entered by this Court on the Twenty-fifth Day of April, 1936, in a case then pending entitled, "In the Matter of The Colorado Fuel and Iron Company and another, Colorado Corporations, Debtors, in Proceedings for Reorganization, Consolidated Case No. 8081," as the same now remains of record in my office at Denver, Colorado.

In Testimony Whereof, I have hereto set my hand and the seal of this Court at Denver, Colorado, this ..... day of ....., 19.....

.....
Clerk, United States District Court.

By: .....
Deputy Clerk.

Exhibit I.

In the District Court of the United States
For the District of Colorado.

In the Matter of The Colorado Fuel and Iron Company, and Another, Colorado corporations, Debtors.	In Proceedings for Reorganization Consolidated Cause No. 8081

Order Approving the Form of Documents and Directing the Transfer of Assets to, and the Issue of Securities and Assumption of Liabilities by, the New Company

This cause coming on to be heard pursuant to an order of this Court dated April 25, 1936, confirming the "Plan of Reorganization of The Colorado Fuel and Iron Company (and The Colorado Industrial Company) dated March 1, 1935" (hereinafter called the Plan), upon the application of Messrs.

J. & W. Seligman & Co., the Reorganization Managers named in the Plan (hereinafter called the Reorganization Managers) for an order approving the form of documents, and directing the transfer of assets to, and the issue of securities and assumption of liabilities by, the New Company (which has heretofore become a party to these proceedings and consented to the entry of this order); and the Court having heard counsel and being fully advised in the premises, it is

Found, ordered, adjudged and decreed as follows:

Article One.

Documents Approved.

The Reorganization Managers have filed herein forms of the documents specified below to carry the Plan into effect. The form of each of such instruments has been determined by the Reorganization Managers and approved by the Committees as provided in, and complies in all respects with the provisions of, the Plan. Such documents are as follows:

(a) form of new Income Mortgage provided for in the Plan to be executed by The Colorado Fuel and Iron Corporation, the new company formed to carry out the Plan (hereinafter called the New Company) to The Chase National Bank of the City of New York and Carl E. Buckley, as Trustees, a copy of which is annexed hereto marked Exhibit A;

(b) form of Warrant Agreement to be entered into by the New Company with The Chase National Bank of the City of New York, as Warrant Agent, a copy of which is annexed hereto marked Exhibit B;

(c) form of stock certificate for Common Stock of the New Company, a copy of which is annexed hereto, marked Exhibit C;

(d) form of instrument of conveyance to be executed by The Colorado Fuel and Iron Company, one of the Debtors herein (hereinafter called the Fuel and Iron Company) and The Colorado Industrial Company, the other Debtor herein (hereinafter called the Industrial Company), the Trustee and The New York Trust Company, as Trustee of the First Mortgage of the Industrial Company, dated August 1, 1904 (hereinafter called the Industrial Trustee) to the New Company, a

copy of which is annexed hereto marked Exhibit D; and

(e) form of instrument of assumption to be executed by the New Company to Central Hanover Bank and Trust Company, as Trustee under the General Mortgage of the Fuel and Iron Company, dated February 1, 1893, assuming the payment of the Bonds outstanding thereunder, a copy of which is annexed hereto marked Exhibit E.

The foregoing documents, including the form of Income Mortgage Bonds included in said Income Mortgage, Exhibit A, and the form of Warrants and Scrip for Warrants included in said Warrant Agreement, Exhibit B, are hereby approved.

Article Two.

Transfer of Assets to New Company and New Subsidiary and Issuance of New Securities.

A. Transfer of Assets.

On July 1, 1936, or on such later date, as soon as practicable after July 1, 1936, as may be determined by the Reorganization Managers, the Fuel and Iron Company, the Industrial Company, the Trustee and the Industrial Trustee shall assign, transfer, convey and deliver to the New Company all their respective right, title and interest in and to all the assets and properties of every nature and description, tangible and intangible, real, personal or mixed, and wheresoever situated, of the Fuel and Iron Company and the Industrial Company, of the Industrial Trustee, as Trustee under the aforesaid First Mortgage, and of the estates of the Debtors and the Trustee (including all special funds and deposits and all cash and securities held by the Industrial Trustee), and the rights, privileges, good will and, in so far as permitted by law, the franchises of the Fuel and Iron Company and the Industrial Company, by executing and delivering to the New Company an instrument of conveyance in substantially the form annexed hereto as Exhibit D, with such changes, if any, therein as shall be approved by the Court.

Said transfer shall be effective as of midnight June 30, 1936, and the operation and conduct of all of the business and affairs of the Fuel and Iron Company and the Industrial

Company by the Trustee after said date shall be deemed to be and shall be for the account of the New Company as fully and to the same extent as if the New Company had taken title to said properties and had assumed the operation thereof at midnight June 30, 1936.

B. Issuance of New Securities.

Simultaneously with the transfer provided for under A above, or promptly thereafter, the New Company shall execute and deliver to The Chase National Bank of the City of New York, as Warrant Agent, a Warrant Agreement in substantially the form annexed hereto as Exhibit B, with such changes, if any, therein as shall be approved by the Court, and as partial consideration for such transfer, shall cause to be issued to or on the order of the Reorganization Managers the following:

(1) 552,660 shares of Common Stock without par value of the New Company.

(2) Warrants (and scrip for Warrants) representing the right to purchase on the terms provided in the Plan, 315,379 shares of Common Stock of the New Company.

and shall agree to cause to be issued to or on the order of the Reorganization Managers $11,053,200 principal amount of 5% Income Mortgage Bonds of the New Company. The consideration for the issuance to or on the order of the Reorganization Managers of said shares of Common Stock and Warrants is adequate, and said 552,660 shares of Common Stock, when issued to or on the order of the Reorganization Managers and distributed by them as in this Order provided, and said 315,379 shares of Common Stock, when issued upon the exercise of such Warrants and against payment to the New Company of the amounts specified in such Warrants, will be full-paid and non-assessable.

Promptly upon the issue of such shares of stock to or on the order of the Reorganization Managers, they shall vote such shares, or cause such shares to be voted, at a meeting of shareholders of the New Company to be held for the purpose, to authorize and consent to the creation by the Board of Directors of the New Company of a new Income Mortgage in substantially the form annexed hereto as Exhibit A, to secure

an issue of $11,053,200 principal amount of 5% Income Mortgage Bonds. The properties of the Debtors described in the Report of the Trustee annexed hereto as Exhibit F, which are to be excluded from the lien of said new Income Mortgage, have been determined by the Reorganization Managers with the approval of the Committees as provided in the Plan, and are hereby approved.

Promptly after such meeting of shareholders, the New Company shall execute and deliver to The Chase National Bank of the City of New York and Carl E. Buckley, as Trustees, its new Income Mortgage in substantially said form and shall cause to be issued to or on the order of the Reorganization Managers $11,053,200 principal amount of its 5% Income Mortgage Bonds.

C. Assumption of General Mortgage 5% Bonds.

Simultaneously with the transfer provided for under A above, or promptly thereafter, and as partial consideration therefor, the New Company shall deliver to Central Hanover Bank and Trust Company, successor trustee under the General Mortgage of the Fuel and Iron Company dated February 1, 1893, an instrument in substantially the form annexed hereto as Exhibit E, with such changes, if any, therein, as shall be approved by the Court, assuming and agreeing to pay the principal of and interest on the General Mortgage 5% Bonds outstanding under said General Mortgage, and to observe and perform all the other covenants and conditions of said General Mortgage on the part of the Fuel and Iron Company to be observed and performed.

D. Cancellation of First Mortgage of the Industrial Company.

Simultaneously with the transfer provided for under A above, or promptly thereafter, the Trustee shall surrender to the Industrial Trustee for cancellation and the Industrial Trustee shall cancel and discharge the $7,741,000 principal amount of Industrial Bonds held in the estate of the Fuel and Iron Company, and the Industrial Trustee shall execute and deliver to the New Company a proper instrument, in form for recording approved by the Reorganization Managers, satisfying and discharging the First Mortgage of the Industrial

Company dated August 1, 1904, and supplements thereto. Thereupon the Industrial Trustee shall be released and discharged from all further obligations and liabilities under or arising out of said First Mortgage dated August 1, 1904, or the supplements thereto.

E. Cancellation of Stock of Industrial Company.

Simultaneously with the delivery of the instrument of satisfaction provided for under D above, or promptly thereafter, the Trustee shall surrender to the Industrial Company for cancellation the shares of stock of the Industrial Company held in the estate of the Fuel and Iron Company, and the Industrial Company shall thereupon cancel such shares and dissolve.

F. General.

The New Company is hereby authorized and directed to carry out all the terms and provisions of said instrument of conveyance, Exhibit D, said Warrant Agreement, Exhibit B, said Income Mortgage, Exhibit A, and said instrument of assumption, Exhibit E.

The provisions of this Order directing the transfer and delivery of the properties and assets of the Debtors to the New Company, the assumption by the New Company of certain obligations of the Debtors and of the Trustee as hereinabove and in Article Three hereof provided, and the issue by the New Company to or on the order of, and the distribution by, the Reorganization Managers of the New Securities, shall be a single and entire order and direction, notwithstanding the provisions hereof permitting the transfer of said properties and assets forthwith and without awaiting the assumption by the New Company of said liabilities or the issue, delivery and distribution of the New Securities.

Article Three

New Company to Assume Certain Other Liabilities

The New Company, as partial consideration for the assets transferred to it pursuant to Article Two of this Order and in addition to the securities to be issued and assumed pursuant to the provisions of subdivisions B and C of Article Two of this Order, shall assume the performance of all obligations by

the Plan provided to be assumed by the New Company, including all liability for the payment of, and shall pay in cash in full, the following:

(1) All claims of the United States of America and the State of Colorado;

(2) All workmen's compensation claims;

(3) All obligations of Arthur Roeder as Receiver in the receivership proceedings pending in this Court at the time of the institution of these proceedings (being the cause entitled "Bankers Trust Company, Trustee, Complainant, vs. The *Colrado* Fuel and Iron Company, Defendant, in Equity No. 10179," and the consolidated cause entitled, "The New York Trust Company, as Trustee, Complainant, vs. The Colorado Fuel and Iron Company, a corporation, et al., Defendants, In Equity No. 10210"), and all obligations of said Arthur Roeder as Trustee of the estates of the Debtors herein;

(4) All obligations of the Fuel and Iron Company to its subsidiaries;

(5) All current liabilities of the Fuel and Iron Company incurred in the ordinary conduct of its business prior to the appointment on August 1, 1933 of the receiver in the aforesaid receivership proceedings;

(6) All claims, as adjusted or liquidated and allowed by this Court, arising from the disaffirmance of contracts by Arthur Roeder as Receiver or Trustee as aforesaid; and

(7) All amounts which may hereafter be allowed by this Court as compensation for services rendered or as reimbursement for expenditures incurred in connection with these proceedings and the prior receivership proceedings and the Plan, by the Trustee, officers, parties in interest, depositaries, the Reorganization Managers, the Committees or their representatives, creditors or stockholders, and the attorneys or agents of any of the foregoing and of the Debtors.

The New Company shall take all the assets transferred to it pursuant to Article Two of this Order and shall receive any and all instruments of transfer or assignment thereof, subject to the express condition that the New Company shall perform the obligations required by this Article Three to be

assumed by the New Company and, upon such transfer, the Trustee shall be relieved of any and all further duties and responsibilities in respect of any such obligations. This Court expressly retains jurisdiction of the assets so transferred and reserves the right to retake such assets and to apply them to the satisfaction of said obligations in case the New Company shall fail to comply with any order of this Court directing such performance within twenty days after the service of a copy of such order, or, if an appeal be taken from any such order, within twenty days after written notice of the final affirmance of such order upon appeal.

Article Four,

Manner and Terms of Distribution of New Securities.

As soon as reasonably practicable after the issuance to or on the order of the Reorganization Managers by the New Company of the New Securities hereinabove in subdivision B of Article Two of this Order directed to be issued, the Reorganization Managers shall cause the Income Bonds, Common Stock and Warrants or scrip for Warrants received by them pursuant to said subdivision B of Article Two (said Income Bonds, Common Stock and Warrants and scrip being hereinafter sometimes referred to collectively as the "New Securities"), to be distributed to the holders of Industrial Bonds and Preferred Stock and Common Stock, in accordance with the Plan and with this Order. No further filing or evidencing of the claims and interests of the holders of Industrial Bonds and Preferred Stock and Common Stock shall be required as a condition of their receiving the New Securities as hereinafter provided, but the Reorganization Managers shall prescribe reasonable regulations and instructions governing the endorsement and surrender of securities of the Debtors, with which the holders thereof must comply in order to receive the New Securities therefor deliverable to such holders under the Plan. The date on which the New Securities are available for such distribution shall be announced in the manner provided in Article Five hereof.

The Reorganization Managers may appoint a bank or trust company in the City of New York and a bank or trust company in the City of Denver (hereinafter referred to as the "Distributing Agents") as custodians, and deliver the New

Securities to the Distributing Agents to be held and disposed of subject to the instructions of the Reorganization Managers. In such case, such instructions shall provide for the distribution of the New Securities to the holders of the Industrial Bonds and Preferred Stock and Common Stock in accordance with the provisions of the Plan and of this Order, and shall be embodied in or accompanied by all such authorizations or agreements as shall be necessary or convenient and proper to empower and direct the Distributing Agents to make such distribution.

The New Company shall cause to be prepared and made available for distribution the New Securities in such amounts and denominations as may be required for distribution to the creditors and stockholders of the Debtors, in accordance with the provisions of the Plan and of this Order.

Upon surrender to the Reorganization Managers, or to the Distributing Agents, of outstanding Industrial Bonds or certificates of Preferred and Common Stock of the Fuel and Iron Company, the Reorganization Managers, or the Distributing Agents if appointed, shall distribute to the respective holders of such Industrial Bonds or Preferred and Common Stock, such kinds and amounts of New Securities as under the terms of the Plan such holders are entitled to receive.

The Reorganization Managers, or the Distributing Agents if appointed, shall from time to time transfer Warrants for full shares of new Common Stock to the New Company or its agents, in exchange for scrip for such Warrants in such denominations as shall be necessary to effect distributions of scrip under the provisions of the Plan and of this Order; and the Warrants for full shares of new Common Stock so transferred shall, upon the distribution of scrip for such Warrants, be deemed to be distributed under the provisions of the Plan and of this Order, but shall be held by the New Company or its agents for the purpose of honoring such scrip so long as such scrip shall remain valid and outstanding.

Any dividends or interest which may be paid in respect of any of the New Securities during the periods when such New Securities shall be held by the Reorganization Managers, or the Distributing Agents if appointed, shall be received and held by the Reorganization Managers or the Distributing

Agents, as the case may be. Thereafter, upon the distribution of any such New Securities to the holders of Industrial Bonds, there shall be paid to the respective distributees such dividends or interest as may have been paid in respect of the New Securities so distributed to them.

Upon the expiration of three years after the announcement that the New Securities are available for distribution, the Reorganization Managers, or the Distributing Agents if appointed, may at any time deliver to the New Company all of the New Securities which then remain undistributed, together with the amounts of all dividends received thereon. The New Securities and the amounts of all dividends so delivered to the New Company shall be held by the New Company subject to the rights, under the provisions of the Plan and of this Order, of the holders of outstanding Industrial Bonds and certificates for Preferred and Common Stock of the Fuel and Iron Company. From and after the date of such delivery any surrender of such Industrial Bonds and certificates of Preferred and Common Stock, shall be made to the New Company.

Prior to the announcement that the New Securities are available for distribution, no holder of any Industrial Bonds or Preferred and Common Stock of the Fuel and Iron Company shall have any right, title or interest in the stock or other securities issued by the New Company, or any right to receive any such stock or other securities.

Article Five.

Date of Distribution of New Securities and Notice Thereof.

When the New Securities are available for distribution in accordance with the provisions of the Plan and of this Order, the Reorganization Managers shall cause an announcement of that fact to be published once in a newspaper published and of general circulation in Denver and once in a newspaper published and of general circulation in New York.

The Trustee shall also cause notices that the New Securities are available for distribution to be mailed to all holders of Industrial Bonds or certificates of stock of the Fuel and Iron Company appearing as such on the books of the Trustee.

Article Six.

Injunction.

All creditors and stockholders of the Fuel and Iron Company and the Industrial Company are hereby severally and respectively perpetually enjoined from prosecuting against the New Company, or against any nominee or assignee or grantee of the New Company, or against any person or persons, corporation or corporations claiming by, under or through the New Company, or against any of the assets transferred to the New Company pursuant to this Order, or against the Industrial Trustee, any suit or proceeding arising out of or based on any obligation or liability of, or interest in, the Fuel and Iron Company or the Industrial Company, or otherwise to impose liability upon the New Company or upon any nominee or assignee or grantee of the New Company or any party to these proceedings or upon any person or persons, corporation or corporations, claiming by, under or through the New Company, or upon the assets transferred to the New Company pursuant to this Order, or upon the Industrial Trustee, in respect of any claim against or interest in either of the Debtors, or to charge the New Company or any nominee, assignee or grantee of the New Company or any party to these proceedings, or any person or persons, corporation or corporations claiming by, under or through the New Company, or any assets transferred to the New Company pursuant to this Order, or the Industrial Trustee, with any liability on or in respect of any matter adjudicated by this Order, except pursuant to the provisions of and in subordination to this order; provided, however, that nothing herein contained shall be deemed to limit or restrict the right of any claimant whose claim or part thereof is required to be assumed or paid under the provisions of this Order as part of the consideration for the assets transferred hereunder or any part thereof to take herein such proceedings in respect thereof as may be authorized or permitted by this Order, or the right of the holder of any lien or charge subject to which the assets transferred under this Order are to be transferred to enforce such lien or charge.

Article Seven.

Matters Reserved.

This Court hereby reserves and retains jurisdiction of these proceedings and the subject-matter thereof for all purposes. Dated June 20, 1936.

J. FOSTER SYMES, District Judge.

Filed June 20, 1936, 11:30 A. M. Charles W. Bishop, Clerk.

United States of America, District of Colorado, ss.

I, Charles W. Bishop, Clerk of the United States District Court for the District of Colorado, do hereby certify that the foregoing is a true, complete and correct copy of an Order (without the exhibits therein referred to) entered by this Court on the 20th day of June, 1936, in a cause then pending entitled, "In the Matter of The Colorado Fuel and Iron Company and another, Colorado Corporations, Debtors, in Proceedings for Reorganization, Consolidated Cause No. 8081," as the same now remains of record in my office at Denver, Colorado.

In Testimony Whereof, I have hereto set my hand and the seal of this Court at Denver, Colorado, this .....day of ....., 19.....

.....

Clerk, United States District Court.

By: .....

Deputy Clerk.

Exhibit J.

The Colorado Fuel and Iron Corporation

to

The Chase National Bank of the City of New York as Warrant Agent

Warrant Agreement.

Dated July 1, 1936.

Warrant Agreement dated July 1, 1936, between The Colorado Fuel and Iron Corporation, a corporation organized and existing under the laws of the State of Colorado (hereinafter called the "Company"), party of the first part, and The Chase National Bank of the City of New York, a corporation organized and existing as a national banking association under the laws of the United States of America, as Warrant Agent (hereinafter called the "Agent"), party of the second part.

Whereas the Company has been organized pursuant to the "Plan of Reorganization of The Colorado Fuel and Iron Company (and The Colorado Industrial Company) dated March 1, 1935," to be the New Company referred to in said Plan, and said Plan has been duly confirmed by the District Court of the United States for the District of Colorado by its order dated April 25, 1936, entered in the cause therein pending entitled "In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors; in Proceedings for Reorganization; Consolidated Cause No. 8081"; and

Whereas by the provisions of the aforesaid Plan and order of Court the Company is required to issue Warrants (hereinafter called the "Warrants") for the purchase of a total of 315,379 shares of its Common Stock and in certain cases Scrip (hereinafter called the "Scrip") for fractional interests in such Warrants; and

Whereas the Company is authorized to issue 1,000,000 shares of Common Stock without par value, of which 552,660 shares are or are to be issued and presently outstanding and 315,379 shares are and have been reserved for issuance upon the exercise of such Warrants, and the Company has given to the Transfer Agent and Registrar for its Common Stock irrevocable instructions to that end;

Now, Therefore, This Agreement Witnesseth:

That in consideration of the premises and of Ten Dollars by the Agent to the Company in hand paid, receipt whereof is hereby acknowledged, and in order to declare the terms upon which such Warrants and Scrip may be issued and the terms and conditions upon and subject to which such Warrants may be exercised and such Scrip may be exchanged for Warrants, the Company convenants and agrees with the Agent, for the benefit of those who from time to time shall become and be holders of the Warrants or Scrip, as hereinafter set forth.

First. The text of the Warrants and of the form of election to purchase shares to be endorsed on the reverse thereof shall be substantially as follows:

Void After February 1, 1950.

No. W..... Warrant For the Purchase of
for the purchase of .....Shares.
Common Stock
of
The Colorado Fuel and Iron Corporation

This is to Certify that
for value received, is entitled to purchase from The Colorado Fuel and Iron Corporation, a Colorado corporation (hereinafter called the "Company"), at any time on or before February 1, 1950, except while the transfer books for the Common Stock of the Company shall be closed ....., fully paid and non-assessable shares of the Company's Common Stock without par value, at the price of $35 per share (hereinafter called the "warrant price"), upon surrender to the Company at the principal office in the City of New York of the Warrant Agent hereinafter mentioned (or of its successor as Warrant Agent) of this Warrant properly endorsed, with the form of election to purchase on the reverse hereof duly filled in and signed, and upon payment of the warrant price for the number of shares in respect of which this Warrant is exercised; provided, however, that under certain conditions set forth in the Warrant Agreement hereinafter mentioned the number of shares of the Company's Common Stock purchasable upon the exercise of this Warrant may be increased or reduced and the warrant price may be adjusted, or securities

other than shares of said Common Stock may become purchasable in lieu thereof upon the exercise of this Warrant. As provided in said Warrant Agreement, the warrant price is payable upon the exercise of this Warrant either in cash, by certified check or bank draft drawn upon New York funds, or by 5% Income Mortgage Bonds of the Company, when presented in negotiable form, accompanied by all unmatured coupons thereto appertaining, which 5% Income Mortgage Bonds will be accepted at their principal amount flat, for a total principal amount not exceeding the aggregate warrant price for all shares in respect of which Warrants are at the time exercised, as a credit on account of such aggregate warrant price and provided that simultaneously any balance of such warrant price is paid in cash, by certified check or bank draft as aforesaid. The right of purchase represented by this Warrant is exercisable, at the election of the holder of record hereof (or, when surrendered properly endorsed in blank, the bearer hereof), either as an entirety or from time to time for part only of the shares specified herein and, in the event that this Warrant is exercised in respect of less than all of such shares, a new Warrant for the remaining number of such shares will be issued on such surrender.

This Warrant is issued under and the rights represented hereby are subject to the provisions of the Warrant Agreement dated July 1, 1936, between the Company and The Chase National Bank of the City of New York, as Warrant Agent, a copy of which Warrant Agreement is on file with said Warrant Agent and to which Warrant Agreement reference is hereby made for a more complete statement of the rights of the holder hereof and of the rights and duties of the Warrant Agent and the rights and obligations of the Company thereunder. As provided in said Warrant Agreement, the Company shall not be required upon the exercise of this Warrant to issue certificates representing any fraction or fractions of a share of stock, but may issue in lieu thereof one or more non-dividend-bearing and non-voting certificates, in such form or forms and containing such terms and conditions as shall be fixed by its board of directors, each representing a fractional right to receive from the Company a certificate representing a full share of stock when presented with other like certificates representing other fractional rights in the aggregate equal to the right to receive at least one full share of stock.

This Warrant and similar Warrants when surrendered properly endorsed at the principal office in the City of New York of the Warrant Agent (or of its successor as Warrant Agent) may be exchanged for another Warrant, or other Warrants of different denominations, of like tenor and representing in the aggregate the right to purchase a like number of shares of the Company's Common Stock.

This Warrant is transferable on the books of the Company at the principal office in the City of New York of the Warrant Agent (or of its successor as Warrant Agent) by the above-named holder of record in person or by duly authorized attorney, upon surrender of this Warrant properly endorsed. The Company and the Warrant Agent may treat the holder of record of this Warrant (or, when presented properly endorsed in blank, the bearer hereof) as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

This Warrant and All Rights Represented Hereby Shall Be Void After February 1, 1950.

This Warrant is not valid until countersigned by the Warrant Agent.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

Dated: July 1, 1936.

The Colorado Fuel and Iron Corporation,

By

President.

Attest:

Secretary.

Countersigned:

The Chase National Bank of the City of New York,

as Warrant Agent,

By

Assistant Cashier.

[Form Of]

Election to Purchase

....., 19.....

To The Colorado Fuel and Iron Corporation:

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the within Warrant for, and to purchase thereunder, ... shares of the stock provided for therein, and requests that certificates for such shares shall be issued in the name of .....

and be delivered to .....

at .....

and, if said number of shares shall not be all the shares purchasable thereunder, that a new Warrant for the balance remaining of the shares purchasable under the within Warrant be delivered to the undersigned at the address stated below.

Signature: .....

Address: .....

.....

Second. The text of the Scrip shall be substantially as follows:

Void After December 31, 1940.

No. WS..... Scrip Certificate for Warrant for the purchase of Common Stock of

For /4th(s) of a Warrant For the purchase of One Share.

The Colorado Fuel and Iron Corporation

This is to Certify that the bearer hereof, upon surrender, at any time on or before December 31, 1940, to the Colorado Fuel and Iron Corporation, a Colorado corporation (hereinafter called the "Company"), at the principal office in the City of New York of the Warrant Agent hereinafter mentioned (or of its successor as Warrant Agent) of this scrip certificate

together with other scrip certificates of like tenor in the aggregate calling for a Warrant for the purchase of one or more full shares of the Company's Common Stock without par value, for value received, is entitled to receive in exchange therefor a Warrant, in registered form, issued under the Warrant Agreement hereinafter mentioned, entitling the holder thereof to purchase, at any time on or before February 1, 1950, upon the terms provided in said Warrant Agreement, the number of shares of Common stock of the Company equal to the highest integral number included in the aggregate of the fractional interests represented by the scrip certificates so surrendered; and the bearer hereof will be entitled also to receive a new scrip certificate for any remaining fractional interest represented by the scrip certificates so surrendered. The fractional interest represented by this scrip certificate is stated at the upper right-hand corner hereof.

This scrip certificate is issued under and the rights represented hereby are subject to the provisions of the Warrant Agreement dated July 1, 1936, between the Company and The Chase National Bank of the City of New York, as Warrant Agent, a copy of which Warrant Agreement is on file with said Warrant Agent, and to which Warrant Agreement reference is hereby made for a more complete statement of the rights of the bearer hereof and the rights and duties of the Warrant Agent and the rights and obligations of the Company thereunder. As more fully stated in said Warrant Agreement, each Warrant issued thereunder entitles the registered holder of such Warrant to purchase, at any time on or before February 1, 1950, the number of shares of the Company's Common Stock therein specified, at the price of $35 per share (hereinafter called the "warrant price"), payable in cash or by 5% Income Mortgage Bonds of the Company at their principal amount flat; provided, however, that under certain conditions set forth in said Warrant Agreement the number of shares of the Company's Common Stock purchasable upon the exercise of such Warrant may be increased or reduced and the warrant price may be adjusted, or securities other than shares of said Common Stock may become purchasable in lieu thereof upon the exercise of such Warrant.

This scrip certificate is issued subject to the condition, and every bearer hereof by accepting the same consents and agrees,

that title to this scrip certificate, and all rights represented hereby, are transferable by delivery with the same effect as in the case of a negotiable instrument payable to bearer, and the Company and the Warrant Agent may treat the bearer of this scrip certificate as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

This Scrip Certificate and All Rights Represented Hereby Shall Be Void After December 31, 1940.

This scrip certificate is not valid until countersigned by the Warrant Agent.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

Dated: July 1, 1936.

The Colorado Fuel and Iron Corporation,

By

President.

Attest:

Secretary.

Countersigned:

The Chase National Bank of the City of New York,
as Warrant Agent,

By

Assistant Cashier.

Third. The Warrants and Scrip shall be executed on behalf of the Company by the manual or facsimile signature of the present or any future President or of any present or future Vice President of the Company, under its corporate seal, affixed or in facsimile, attested by the manual or facsimile signature of the present or any future Secretary or of any present or future Assistant Secretary of the Company. The Warrants and Scrip shall be countersigned by the Agent (or by any successor to the Agent) then acting as Warrant Agent under this Agreement and shall not be valid until so countersigned. Warrants and Scrip may be so countersigned, however, by the Agent (or by its successor as Agent) and be delivered by such Agent, notwithstanding that the persons whose manual or facsimile signatures appear thereon as proper officers of the Company shall have ceased to be such officers at the time of

such countersignature or delivery. All Warrants shall be lettered W and, irrespective of the number of shares specified therein, shall be numbered from 1 consecutively upwards. The certificates for Scrip shall be lettered WS and, irrespective of the respective fractional interests represented by each, shall be numbered from 1 consecutively upward. Upon the written order of the Company, signed by the President or a Vice President and by the Secretary or Treasurer or an Assistant Secretary or an Assistant Treasurer of the Company, Warrants and Scrip shall be countersigned by the Agent and delivered from time to time, on or before their respective dates of expiration, for the respective numbers of shares (or in the case of Scrip, the respective fractional interests in Warrants) of the Company's Common Stock, not to exceed (except as provided in Section Eight of this Agreement) 315,379 such shares as constituted July 1, 1936, and, in the case of Warrants, in such names as the Company in such order shall direct.

Fourth. Title to the Warrants and the rights represented thereby shall be transferable on the books of the Company kept for such purpose at the principal office in the City of New York of the Agent (or of its successor as Agent), by the respective holders of record of such Warrants in person or by duly authorized attorney, upon surrender of such Warrants properly endorsed and accompanied by the requisite documentary stamps for the payment of the transfer taxes, if any, incident to their transfer or New York funds sufficient to purchase such stamps. Thereupon, a new Warrant or new Warrants, registered in the name of the transferee or respective transferees, shall be issued. Warrants also shall be exchangeable at the option of the holder of record thereof, when surrendered properly endorsed at the principal office in the City of New York of the Agent (or of its successor as Agent) for another Warrant, or other Warrants of different denominations, of like tenor and representing in the aggregate the right to purchase a like number of shares of the Company's Common Stock. The Company and the Agent may treat the holder of record of any of the Warrants (or, when presented properly endorsed in blank, the bearer thereof) as the absolute owner thereof for all purposes and shall not be affected by any notice to the contrary.

Fifth. Subject to the provisions of this Agreement, each

holder of record of Warrants (or, when properly endorsed in blank, each bearer thereof) shall have the right, which may be exercised as in such Warrants expressed, to purchase from the Company (and the Company shall issue and sell to such holder or bearer of Warrants) the number of fully paid and non-assessable shares of its Common Stock without par value provided in such Warrants, upon surrender to the Company at the principal office in the City of New York of the Agent (or of its successor as Agent) of such Warrants properly endorsed, with the form of election to purchase on the reverse thereof duly filled in and signed, and upon payment to such Agent for the account of the Company of the warrant price, determined in accordance with the provisions of Section Tenth of this Agreement, for the number of shares in respect of which such Warrants are then exercised. Payment of such warrant price may be made in cash, by certified check or bank draft drawn upon New York funds, or by 5% Income Mortgage Bonds of the Company, when presented in negotiable form, accompanied by all unmatured coupons thereto appertaining, which 5% Income Mortgage Bonds will be accepted at their principal amount flat, for a total principal amount not exceeding the aggregate warrant price for all shares in respect of which Warrants are at such time exercised, as a credit on account of such aggregate warrant price and provided that simultaneously any balance of such warrant price is paid in cash by certified check or bank draft as aforesaid. Upon such surrender of Warrants, and payment of the warrant price as aforesaid, the Company shall issue and cause to be delivered with all reasonable dispatch to or upon the written order of the holder or bearer as aforesaid of such Warrants and in such name or names as such holder or bearer may designate, a certificate or certificates for the number of full shares of stock purchasable upon the exercise of such Warrants, together with such if any certificate for any fraction or fractions of a share of such stock (if fractional shares are then called for by the Warrants outstanding) as the Company pursuant to the provisions of Section Eleventh of this Agreement shall have elected to issue. Such certificate or certificates shall be deemed to have been issued and any person so designated to be named therein shall be deemed to have become a holder of record of such shares, except for the right to vote on such shares or to consent or to receive notice as a stockholder, as of the date of the surrender

of such Warrants and payment of the warrant price as aforesaid; provided, however, that if at the date of surrender of such Warrants and payment of such warrant price, the transfer books for the Company's Common Stock or other class of stock purchasable upon the exercise of such Warrants shall be closed, the certificates for the shares in respect of which such Warrants are then exercised shall be issuable as of the date on which such books shall next be opened (whether before, on or after February 1, 1950) and until such date the Company shall be under no duty to deliver any certificate for such shares; provided further, however, that the transfer books aforesaid, unless otherwise required by law, shall not be closed at any one time for a period longer than twenty days. The rights of purchase represented by the Warrants shall be exercisable, at the election of the holders of record thereof (or, when presented properly endorsed in blank, the bearers thereof), either as an entirety or from time to time for part only of the shares specified therein and, in the event that any Warrant is exercised in respect of less than all of the shares specified therein at any time prior to the date of expiration of the Warrants a new Warrant or Warrants will be issued for the remaining number of shares specified in the Warrant so surrendered, and the Agent is hereby irrevocably authorized to countersign and to deliver the required new Warrants pursuant to the provisions of this Section and of Section Fourth of this Agreement and the Company, whenever required by the Agent, will supply the Agent with Warrants dully executed on behalf of the Company for such purpose.

Sixth. Title to Scrip and all interests represented thereby shall be transferable by delivery. Each bearer of Scrip shall have the right, which may be exercised as in such Scrip expressed, to exchange such Scrip, at any time on or before the date of expiration of the Scrip, at the principal office in the City of New York of the Agent (or of its successor as Agent), upon surrender thereof together with other Scrip of like tenor in the aggregate calling for a Warrant for the purchase of one or more full shares of Common Stock of the Company, for a Warrant or Warrants representing the right to purchase the number of shares of Common Stock of the Company equal to the highest integral number included in the aggregate of the fractional interests represented by the Scrip certificates so sur-

rendered. For any excess of fractional interests represented by the Scrip certificates so surrendered, over the one or more full shares of Common Stock of the Company called for by the Warrant or Warrants delivered in exchange for such Scrip certificates, the bearer of such Scrip certificates so surrendered shall be entitled to receive until the date of expiration of the Scrip a new Scrip certificate for such excess. The Agent is hereby irrevocably authorized to countersign and to deliver the Warrant or Warrants and Scrip if any required to honor Scrip certificates so surrendered for exchange, and the Company, whenever required by the Agent will supply the Agent with Warrants and Scrip duly executed on behalf of the Company for such purpose.

Seventh. Delivery of certificates for shares issuable upon the exercise of Warrants shall be made free of all taxes in respect of such delivery and the Company will pay the taxes or other duties, if any, in connection with the delivery of such certificates; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issue or delivery of any certificates for shares in a name other than that of the holder of record of Warrants or of the bearer of Scrip in respect of which such shares are issued.,

Eighth. In case any of the Warrants or Scrip shall be mutilated, lost, stolen, or destroyed, the Company may in its discretion issue and the Agent shall countersign and deliver in exchange and substitution for and upon cancellation of the mutilated Warrant or Scrip, or in lieu of and substitution for the Warrant or Scrip lost, stolen, or destroyed, a new Warrant or new Scrip, as the case may be, of like tenor and representing an equivalent right or interest; but only upon receipt of evidence satisfactory to the Company and the Agent of such loss, theft or destruction of such Warrant or Scrip and indemnity, if requested, also satisfactory to them.

Ninth. There have been reserved out of the Company's authorized and unissued shares of Common Stock, a number of shares sufficient to provide for the exercise of the rights of purchase represented by the Warrants and Scrip, and the Transfer Agent for such Common Stock and every subsequent Transfer Agent for any shares of the Company's capital stock

issuable upon the exercise of any of the rights of purchase aforesaid are hereby irrevocably authorized and directed at all times to reserve such number of authorized and unissued shares as shall be requisite for such purpose. The Company will keep on file with the Transfer Agent for the Company's Common Stock and with every subsequent Transfer Agent for any shares of the Company's capital stock issuable upon the exercise of the rights of purchase represented by the Warrants a copy of this Agreement. The Agent under this Agreement is hereby irrevocably authorized to requisition from time to time such Transfer Agent for stock certificates required to honor outstanding Warrants or Scrip. The Company will supply such Transfer Agent with duly executed stock certificates for such purpose and will itself provide or otherwise make available any certificates for fractional shares authorized for the purposes of Section Eleventh of this Agreement. All Warrants and Scrip surrendered in the exercise of the rights thereby evidenced shall be cancelled by the Agent and shall thereafter be delivered to the Company, and such cancelled Warrants, together with any cancelled Scrip in respect of which the rights of purchase represented by the Warrants exchangeable for such Scrip were exercised, shall constitute sufficient evidence of the number of shares of stock which have been issued upon the exercise of such Warrants and Scrip. Promptly after the date of expiration of the Scrip, the Agent shall certify to the Company the total aggregate amount of Scrip then outstanding and thereafter no shares of stock shall be subject to reservation in respect of the Warrants held by the Agent against the exercise of such Scrip, and all such Warrants shall thereupon be cancelled by the Agent and delivered to the Company. Promptly after the date of expiration of the Warrants, the Agent shall certify to the Company the total aggregate amount of Warrants then outstanding, and thereafter no shares of stock shall be subject to reservation in respect of such Warrants.

Tenth. A. The term "warrant price", wherever used in this Agreement, shall mean the price per share at which shares of the Common Stock of the Company shall, at the time be purchasable under any Warrant, determined as hereinafter provided. The term "Common Stock", wherever used in this Agreement, shall mean not only the 1,000,000 shares of Com-

mon Stock of the Company authorized by its certificate of incorporation at the date of the Warrants, but also the shares of stock of any class hereafter authorized which shall not be limited to a fixed sum or percentage in respect to the right of the holders thereof to participate in dividends, or in the distribution of assets upon a voluntary or involuntary liquidation, dissolution or winding up of the Company.

B. The warrant price from and after the issuance of the Warrants, unless and until adjusted as hereinafter provided, shall be $35 per share. Except in accordance with the provisions of Paragraph C (3) below, the warrant price shall never exceed $35 per share and, having been reduced at any time or from time to time by adjustment as herein provided, shall never thereafter, except in accordance with the provisions of said Paragraph C (3) below, be increased above the amount to which so reduced, notwithstanding the subsequent issue of shares of Common Stock at a price exceeding such reduced warrant price.

C. For the purpose of this Paragraph C, the term "additional shares" shall mean all shares of Common Stock (in addition to the 552,660 shares to be outstanding at the date of the Warrants) hereafter issued or sold from time to time, whether at a price equal to or above or below the warrant price then in effect. If and whenever, prior to the exercise or expiration of all purchase rights represented by any Warrants at any time outstanding, the Company shall issue or sell any "additional shares" at a price less than the warrant price in effect immediately prior to such issue or sale, the warrant price shall thereupon be adjusted, and if more than one issue or sale shall be made successively adjusted as follows: The adjusted warrant price shall be determined by multiplying 552,660 by the Base Price (the term "Base Price", for the purposes hereof, being deemed to mean $35 unless and until reduced pursuant to Paragraph D below, and when so reduced, the term Base Price shall mean such reduced price), and adding to the product thereby obtained a sum equal to the aggregate amount of money in dollars, or the fair value in dollars of the property or other consideration, if any, received by the Company upon the issue of all "additional shares" then or at any time theretofore issued, and dividing the resulting total by a divisor consisting of 552,660 increased by the number of all such "ad-

ditional shares", and the resulting quotient shall be the adjusted warrant price per share. Upon each such adjustment of the warrant price, the holder of each Warrant shall thereafter be entitled, instead of purchasing the number of shares specified in his Warrant at the price of $35 per share, to purchase at the adjusted warrant price per share the number of shares calculated to the nearest one-hundredth of a share, obtained by multiplying the Base Price by the number of shares stated to be purchasable on the face of his Warrant and dividing the product so obtained by the adjusted warrant price per share.

For the purpose of this Paragraph C, the following provisions shall also be applicable:

(1) Except as hereinafter in this sub-paragraph (1) provided, shares of Common Stock issued as a stock dividend shall be treated as "additional shares" but shall be deemed to have been issued without consideration. If at any time the Company shall declare a cash dividend on any of the Common Stock and shall contemporaneously or within three months after the date of payment of such dividend give to the holders thereof the right to subscribe for additional Common Stock at a price which shall net the Company in the aggregate substantially the amount of such cash dividend so declared, such Common Stock so issued in respect of any subscription shall be deemed to have been issued as a stock dividend. The provisions of this sub-paragraph (1) are subject to the following: In case of the issue of stock dividends in an amount not exceeding (taking any shares so issued at the warrant price in effect at the time of such issue) the aggregate amount of the earned surplus of the Company as hereinafter defined, the shares of Common Stock issued as such stock dividend shall be deemed to have been issued for a consideration equal to the warrant price in effect at the time of such issue, and, accordingly, no adjustment shall be made in the warrant price or in the number of shares purchasable under the Warrants in such case.

(2) In case the Company shall at any time issue in exchange for shares of its Common Stock theretofore issued and outstanding a large number of shares of

Common Stock, the excess number of shares of Common Stock so issued shall be treated as a stock dividend subject to all the provisions of the foregoing sub-paragraph (1) and Paragraph G below.

(3) In case the Company shall at any time issue in exchange for shares of its Common Stock theretofore issued and outstanding a smaller number of shares of Common Stock, the warrant price then in effect shall be increased and the number of shares of Common Stock purchasable under the Warrants shall be decreased correspondingly, and in all subsequent calculations under this Paragraph C there shall be subtracted from the divisor above mentioned a sum equal to the number of shares by which the issued and outstanding shares shall be reduced upon such exchange.

(4) In case the Company shall in any manner grant or offer any rights to subscribe for or to purchase Common Stock of the Company, or grant or offer any options for the purchase of its Common Stock, any adjustment required to be made in accordance with the provisions hereof in the warrant price and in the number of shares purchasable under the Warrants on account of the issue of such Common Stock shall be made only as of the close of business on the day on which such subscription rights or options shall expire; provided, however, that if such subscription rights or options shall continue in effect for a longer period than six months from the date when the same were granted or offered, any such adjustment shall be made only as of the close of business June 30 and December 31 in each calendar year, in respect of the shares of Common Stock issued during the preceding six months upon the exercise of such rights or options, and as of the close of business on the day upon which such subscription rights or options shall expire, in respect of the shares of Common Stock so issued between the close of business on the preceding June 30 or December 31, as the case may be, and the close of business on the day upon which such subscription rights or options shall expire.

(5) In case the Company shall in any manner issue or sell obligations or stock convertible into or exchangeable for Common Stock of the Company, then all shares

of Common Stock issued upon the conversion of or in exchange for such obligations or stock shall be deemed to be "additional shares", and the amount of money in dollars, or the fair value in dollars of the property or other consideration, if any, received by the Company in consideration for the issue or sale of such obligations or stock shall be deemed to be the consideration received for the issue or sale of such Common Stock; and any adjustment required to be made in accordance with the provisions hereof in the warrant price and in the number of shares purchasable under the Warrants by reason of the issue of such Common Stock shall be made only as of the close of business June 30 and December 31 in each calendar year, in respect of the shares of Common Stock issued during the preceding six months upon the conversion of or in exchange for such obligations or stock, and as of the close of business on the day upon which such right of conversion or exchange shall expire, in respect of the shares of Common Stock so issued between the close of business on the preceding June 30 or December 31, as the case may be, and the close of business on the day upon which such right of conversion or exchange shall expire.

(6) In determining the amount received by the Company upon the issue of "additional shares", such determination shall be made without the deduction of any commission, discount or expenses paid for underwriting or marketing, or in connection with the sale thereof.

(7) In case the Company shall issue any "additional shares" for property or services, the value of such property or services shall, for the purposes hereof, be conclusively determined by the board of directors of the Company.

D. If and whenever, prior to the exercise or expiration of all purchase rights represented by any Warrants at any time issued, the Company shall pay any dividend of cash or assets or make any other distribution of cash or assets to the holders of its Common Stock in an amount exceeding the earned surplus of the Company as hereinafter defined at the time of the declaration of such dividend or distribution, the warrant price shall thereupon be reduced by the amount by which such

dividend or other distribution paid upon one share of Common Stock exceeds the ratable portion of such earned surplus applicable to one share of Common Stock at the time of the payment of such dividends or other distribution; provided, however, that the number of shares of Common Stock purchasable under the Warrants shall not be changed by reason of such dividend or distribution. In case of any reduction of the warrant price pursuant to this Paragraph D, a similar reduction shall be made in the Base Price in all subsequent calculations. The value of any assets (other than cash) distributed to the holders of Common Stock shall, for the purposes of this Paragraph D, be conclusively determined by the board of directors of the Company.

E. If, at any time prior to the exercise or expiration of all purchase rights represented by any Warrants at any time issued, the Company shall be consolidated with or merged into any other corporation or corporations, or shall sell, for securities or partly for cash and partly for securities, all or substantially all of its property, assets, business and good-will, as an entirety, to another corporation or corporations, lawful provision shall be made, as part of the terms of any such consolidation, merger or sale, whereby the holder of each Warrant shall thereafter be entitled to purchase, in lieu of each share of the Common Stock of the Company otherwise purchasable upon the exercise of such Warrant, but at the warrant price in effect at the time of such consolidation, merger or sale (subject to reduction as hereinafter provided) the same kind and amount of securities (including in such term stock of any class or classes) as may be issuable or distributable upon such consolidation, merger or sale with respect to each share of Common Stock; provided, however, that the warrant price shall be reduced by the amount of any cash distributable or payable upon any such consolidation, merger or sale with respect to each share of Common Stock in excess of the ratable portion of the earned surplus of the Company as hereinafter defined at the time of such consolidation, merger or sale applicable to one share of Common Stock. Lawful provision having been so made, from and after such consolidation, merger or sale, all rights of the holders of Warrants shall cease and determine (including the right to purchase shares of the Common Stock and all rights with respect to further ad-

justments of the warrant price and the number of shares of Common Stock purchasable upon the exercise thereof) except the right to purchase during the life of the Warrants such securities as above provided as such securities may from time to time be constituted.

F. If the number of shares of Common Stock purchasable upon the exercise of the Warrants shall be required to be increased or decreased and the warrant price required to be adjusted, or securities other than shares of Common Stock shall become purchasable in lieu of shares of Common Stock upon exercise of the Warrants, then, in each case, the Company shall forthwith:

(1) file with the Warrant Agent a certificate executed by the President or a Vice-President and attested by the Secretary or an Assistant Secretary of the Company, stating the increased or decreased number of shares of Common Stock, and the adjusted warrant price per share, or specifying the kind and amount of securities, so purchasable under the Warrants, and setting forth in reasonable detail the method of calculation and the facts (including the amount of money in dollars, or the fair value in dollars of the property or other consideration, if any, received or deemed to have been received for any "additional shares" or convertible securities) upon which such calculation is based; and

(2) cause a notice stating the fact of such increase or decrease in the number of shares so purchasable and the adjusted warrant price per share, or the fact that such kind and amount of securities are purchasable in lieu of each share of Common Stock, to be published at least once a week for two consecutive weeks in a newspaper of general circulation in Denver and a newspaper of general circulation in the Borough of Manhattan, City of New York.

G. The term "earned surplus of the Company" as used herein shall be deemed to mean the aggregate amount of the consolidated net earnings and income of the Company and of its subsidiary companies from the organization of the Company to the date as of which the amount of its earned surplus shall be determined (after deducting (a) interest, including interest on the outstanding Income Mortgage Bonds of the

Company for the years ending March 31, 1937 and March 31, 1938, at the rate of not exceeding 5% per annum to the extent that such interest shall be earned in the calendar years 1936 and 1937, respectively, as provided in the Income Mortgage; and interest from April 1, 1938, at the rate of 5% per annum, (b) all losses and other proper charges against earnings and income, and (c) all dividends or other distributions of cash or assets to stockholders, including all stock dividends in respect of which no adjustment is to be made in respect of the warrant price or in the number of shares purchasable under the Warrants as hereinabove in Paragraph C (1) provided, any shares issued as such stock dividends to be taken for the purpose of such deduction at an amount equal to the warrant price in effect at the time such shares were issued), but excluding all stock dividends in respect of which an adjustment is to be made in respect of the warrant price or in the number of shares purchasable under the Warrants as hereinabove in Paragraph C provided, and excluding all dividends of cash or assets or other distributions of cash or assets to stockholders in respect of which an adjustment is to be made in respect of the warrant price as hereinabove in Paragraph D provided. The term "subsidiary company" shall mean any corporation, ninety per cent. or more of whose capital stock entitled to vote for the election of directors shall be owned by the Company, or by one or more of its subsidiary companies, or by the Company and one or more of its subsidiary companies.

Eleventh. If there shall be any adjustment of the warrant price pursuant to the provisions of Section Tenth of this Agreement or any increase or decrease in the number of shares of the Company's authorized capital stock as constituted July 1, 1936, whereby any fraction or fractions of a share shall become purchasable upon the exercise of then outstanding Warrants, the Company shall not be required upon the exercise of such Warrants to issue certificates representing such fraction or fractions of a share, but may issue in lieu thereof one or more non-dividend bearing and non-voting certificates, in such form or forms as shall be approved by its board of directors, each representing a fractional right to receive from the Company a certificate representing a full share of stock when presented with other like certificates representing other fractional rights in the aggregate equal to the right to receive at

least one full share of stock. Such certificates may contain such terms and conditions as shall be fixed by the board of directors of the Company and may become void and of no effect after a reasonable period, not less than three years from the date of issuance, to be determined by said board of directors and specified in such certificates.

Twelfth. Nothing contained in this Agreement or in any of the Warrants or Scrip shall be construed as conferring upon the holders thereof the right to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter, or any rights whatsoever as stockholders of the Company; provided, however, that in the event that a meeting of stockholders shall be called to consider and take action on a proposal for the voluntary dissolution of the Company, other than in connection with a consolidation, merger or sale of all, or substantially all, of its property, assets, business and goodwill as an entirety, then and in that event the Company shall cause a notice thereof to be published at least once a week for two consecutive weeks in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York, such publication to be completed at least twenty days prior to the date fixed as a record date or the date of closing the transfer books for the determination of the stockholders entitled to vote at such meeting. If such notice shall have been so given and if such a voluntary dissolution shall be authorized at such meeting or any adjournment thereof, then from and after the date on which such voluntary dissolution shall have been duly authorized by the stockholders, the purchase rights represented by the Warrants and all other rights with respect thereto shall cease and determine. Within 7 days after the date of the first publication of any notice pursuant to the provisions of this Section Twelfth, the Company will also cause a copy thereof to be mailed, postage prepaid, to each holder of record of Warrants at such address as appears upon the transfer books for such Warrants; but failure to mail such notice or any imperfection or defect therein shall not affect the sufficiency for all purposes of this Agreement of notice given by publication in compliance with this Section Twelfth.

Thirteenth. The Agent promptly shall account to the Com-

pany with respect to Warrants exercised and concurrently pay to the Company all moneys received by the Agent for the purchase of shares of the Company's stock through the exercise of such Warrants. Income Mortgage Bonds of the Company received by the Agent upon the exercise of Warrants shall be delivered also by the Agent to the Company from time to time, at least quarter-annually. The Company hereby covenants and agrees with the Agent, for the benefit of the owners and holders of the Warrants and Scrip, to pay over the proceeds received by the Company from the exercise of the Warrants to the Corporate Trustee under the Company's Income Mortgage securing its outstanding Income Mortgage Bonds, to be applied by said Trustee to the purchase, on calls for tenders, of such Income Mortgage Bonds at prices not exceeding the principal amount thereof together with any unpaid cumulative interest thereon, or, to the extent that such purchases cannot be made, to the redemption by lot of such Income Mortgage Bonds at the principal amount thereof together with any unpaid cumulative interest thereon. All Income Mortgage Bonds delivered to the Company as aforesaid or so purchased or redeemed with the proceeds of the Warrants will be cancelled and no Income Mortgage Bonds will be issued in lieu thereof, but the Agent shall be under no duty to ascertain what disposition is made by the Company of such Income Mortgage Bonds nor be under any duty as to the application of the proceeds of the Warrants so received by the Company.

Fourteenth. Any corporation into which the Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Agent may be a party, shall be the successor Agent under this Agreement without the execution or filing of any paper or any further act upon the part of the parties hereto. The Agent may resign and be discharged from its duties under this Agreement by giving to the Company notice in writing, and to the holders of the Warrants and Scrip notice by publication of such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in Denver and in a newspaper of general circulation in the Borough of Manhattan, City of New York, prior to the date so specified. Subject to its right to compensation, reim-

bursement and indemnity, as provided for in this Agreement, the Agent may be removed at any time by an instrument or concurrent instruments in writing filed with the Agent and executed by the holders of Warrants representing the right to purchase at least 50% of the aggregate number of shares of Common Stock of the Company purchasable upon the exercise of the Warrants then outstanding. In case of the resignation or removal of the Agent as aforesaid, a successor may be appointed by the Company by a certificate of the Company, executed by the President or a Vice-President and attested by the Secretary or an Assistant Secretary of the Company and filed with such successor, certifying that such successor has been so designated the Agent under this Agreement by the board of directors of the Company, and thereupon such successor, without any further act upon the part of the parties hereto, shall become and be the Agent under this Agreement; but unless or until such successor is appointed by the Company as aforesaid the holders of Warrants representing the right to purchase at least 25% of the aggregate number of shares of Common Stock of the Company purchasable upon the exercise of the Warrants then outstanding, by instrument or concurrent instruments in writing, may appoint such successor, who, upon receipt of such instrument or instruments of appointment, shall in like manner as a successor Agent appointed by the Company become and be the Agent under this Agreement. Any successor so appointed by the holders of Warrants shall, nevertheless, immediately and without further act be superseded by a successor appointed by the Company in the manner hereinabove provided. During any vacancy in the office of Agent under this Agreement, however, all rights represented by the Warrants or Scrip may be exercised at the principal office in Denver of the Company.

Fifteenth. The Agent accepts its appointment as Agent under this Agreement subject to the following terms and conditions:

(a) The Agent shall not be responsible for, or liable in respect of, and makes no representations as to, the recitals contained herein or the validity or enforceability hereof or of the Warrants or Scrip or of any securities issuable upon the exercise of Warrants.

(b) The Agent shall be entitled to receive reason-

able compensation and re nbursement for reasonable expenses and liabilities incurred hereunder, to employ attorneys and agents, and to consult with legal counsel (who may be counsel for the Company) in connection with anything which it may do under this Agreement, all at the expense of the Company. For any action taken or omitted in good faith upon advice of such legal counsel the Agent shall not be liable.

(c) The Agent shall not be responsible for any act or omission of any of its agents or attorneys who shall have been selected by it in good faith and shall incur no liability whatsoever for anything done or omitted hereunder, or for anything whatsoever in connection herewith, except for its own wilful misconduct or gross negligence.

(d) As to any matter, fact or thing which it may be necessary or advisable to establish in connection with the Agent's taking any action hereunder, the Agent shall be fully protected in relying upon a certificate of the Company executed by the President or a Vice-President and attested by the Secretary or an Assistant Secretary of the Company, certifying as to such matter, fact or thing. The Agent may accept a certificate signed by the Secretary or an Assistant Secretary of the Company, under its corporate seal, as conclusive evidence that any resolution has been duly adopted by the board of directors of the Company, and the Agent shall be fully protected in relying thereon.

(e) The Agent may buy, sell, own, hold and deal in Warrants and Scrip and in any securities of the Company and shall have the same rights in respect thereof as though not a party to this Agreement.

(f) The Agent shall be under no duty to make any investigation or inquiry as to the statements contained in any certificate filed pursuant to Paragraph F(1) of Section Tenth, but may accept such certificate as conclusive evidence of the statements therein contained, and shall be fully protected in relying thereon; provided, however, that the Agent, in its discretion, may and upon the written request of the holders of Warrants representing the right to purchase at least 25% of the aggregate number of shares of Common Stock

of the Company purchasable upon the exercise of the Warrants then outstanding and upon being indemnified to its satisfaction, shall cause an investigation to be made of the accuracy of any such statement, in such manner as, in the Agent's sole discretion, the Agent shall deem advisable. The Agent shall also be entitled to receive from the Company reimbursement for the reasonable expenses and liabilities incurred by the Agent in connection with any reasonable investigation made by it pursuant to this Paragraph (f).

(g) The Agent shall be under no obligation to institute, appear in, conduct, or defend any suit or litigation or to take any action by reason of any matter or thing connected with this Agreement or by reason of being Agent hereunder, which in its opinion will be likely to involve expense or liability, until the amount of such expense shall be advanced and until it shall be indemnified as often as may be required to its full satisfaction for all costs and liabilities of every kind which in its opinion such action or proceeding may involve.

Sixteenth. Any of the rights conferred upon the holders of any Warrants or Scrip by the terms of such Warrants or Scrip or of this Agreement may be enforced by the respective holders of such Warrants or Scrip by appropriate proceedings at law or in equity or otherwise, without prejudice to the right which is hereby conferred upon the Agent in its own name to enforce each and all of the provisions contained in this Agreement for the benefit of the holders of the Warrants and Scrip from time to time outstanding hereunder. All rights of action under this Agreement or under any of the Warrants or Scrip may be enforced by the Agent without the possession of any of the Warrants or Scrip or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Agent shall be brought in its name as Agent, and any recovery of judgment shall be for the ratable benefit of the holders of the Warrants and Scrip, as their respective rights or interest may appear. The Company covenants and agrees to indemnify and hold harmless the Agent, in so far as it acts under this Agreement on behalf of the holders of outstanding Warrants or Scrip, from any liability which the Agent may or might incur by reason of

any action taken or not taken by it in good faith pursuant to the provisions of this Agreement.

Seventeenth. Forthwith upon the appointment of any Transfer Agent for the Common Stock of the Company or of any subsequent Transfer Agent for shares of such Common Stock or other shares of the Company's capital stock issuable upon the exercise of the rights of purchase represented by the Warrants, the Company will file with the Agent under this Agreement a statement setting forth the name and address of such Transfer Agent. Any notice or demand to be addressed to the Company by the Agent under this Agreement shall be sufficiently given or made when deposited, enclosed in a postpaid envelope in a post office letter box in the City of New York or elsewhere, directed (until some other address is filed in writing by the Company with the Agent) to The Colorado Fuel and Iron Corporation, Denver, Colorado.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

THE COLORADO FUEL AND IRON CORPORATION,
By Arthur Roeder, President.

(Corporate Seal)

Attest:

D. C. McGrew, Secretary.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
As Warrant Agent,

(Corporate Seal)

By A. E. Bates, Vice-President.

Attest:

J. R. Thompson, Assistant Cashier.

[Verifications omitted.]

Exhibit K.

Plan of Reorganization of

The Colorado Fuel and Iron Company
(and The Colorado Industrial Company)

Dated March 1, 1935

Notice That the New Securities Under the Plan of Reorganization Are Ready for Distribution.

To the holders of:

First Mortgage Five Per Cent, Thirty Year Bonds, Due August 1, 1934, of
The Colorado Industrial Company, and

8% Cumulative Preferred Stock and Common Stock of
The Colorado Fuel and Iron Company.

The above mentioned Plan of Reorganization was confirmed by the District Court of the United States for the District of Colorado by order dated April 25, 1936, entered in the proceedings therein pending entitled "In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors, In Proceedings for Reorganization, Consolidated Cause No. 8081". By order dated June 20, 1936, said Court directed The Colorado Fuel and Iron Corporation (a Colorado corporation which has been organized to be the New Company provided for in the Plan and which has acquired the properties formerly owned by The Colorado Fuel and Iron Company) to issue its 5% Income Mortgage Bonds, Common Stock and Warrants to purchase Common Stock in accordance with the provisions of the Plan.

Such New Securities Are Now Ready for Distribution.

In order to obtain the new securities to which they are entitled under the Plan, holders of said First Mortgage Bonds of the Colorado Industrial Company and holders of Preferred Stock and Common Stock of The Colorado Fuel and Iron Company must surrender their bonds or stock certificates, accompanied by the prescribed form of transmittal letter mentioned below, to either

The Chase National Bank of the City of New York,
11 Broad Street, New York, N. Y.
or
International Trust Company,
Denver, Colorado.

which have been appointed Distributing Agents for the new securities.

Holders of said First Mortgage Bonds of The Colorado Industrial Company are entitled to receive under the Plan, for each $1,000 principal amount of such Bonds, upon surrender thereof (together with interest coupons thereon due August 1, 1933, February 1, 1934 and August 1, 1934):

(a) $400 principal amount of 5% Income Mortgage Bonds due April 1, 1970, of the New Company; and
(b) 20 shares of Common Stock without par value of the New Company.

Coupons appurtenant to First Mortgage Bonds of The Colorado Industrial Company, which matured on or before February 1, 1933, but which have not yet been collected, will be paid upon presentation thereof at the office of The New York Trust Company, 100 Broadway, New York, N. Y., paying agent for such coupons.

Holders of 8% Cumulative Preferred Stock of The Colorado Fuel and Iron Company are entitled to receive under the Plan, for each share of such stock:

Warrants to purchase, at any time on or before February 1, 1950, three shares of Common Stock of the New Company at $35 per share.

Holders of Common Stock of The Colorado Fuel and Iron Company are entitled to receive under the Plan, for each share of such stock:

Warrants to purchase, at any time on or before February 1, 1950, three-fourths of a share of Common Stock of the New Company at $35 per share.

Scrip certificates exchangeable in amounts aggregating Warrants for one full share or multiples thereof, will be delivered for fractional interests.

The 5% Income Mortgage Bonds and the Common Stock of the New Company have been listed on the New York Stock Exchange. Application has been made to list the Warrants on the New York Curb Exchange.

All First Mortgage Bonds of The Colorado Industrial Company and all certificates for Preferred Stock and Common Stock of The Colorado Fuel and Iron Company surrendered for exchange must be accompanied by the prescribed form of transmittal letter. Copies of such form of transmittal letter are being mailed to all known holders of such securities. Additional copies may be obtained upon application to either of said Distributing Agents or to the undersigned.

J. & W. SELIGMAN & CO.,
Reorganization Managers.
September 1, 1936. 54 Wall Street, New York, N. Y.

Exhibit L

The Colorado Fuel and Iron Company

And

The Colorado Industrial Company

And

Arthur Roeder, as Trustee

And

The New York Trust Company, as Trustee

To

The Colorado Fuel and Iron Corporation

Indenture and Bill of Sale.

Dated as of July 1, 1936.

Indenture and Bill of Sale, dated as of July 1, 1936, between The Colorado Fuel and Iron Company, a Colorado corporation, (hereinafter called the Fuel and Iron Company), party of the first part, The Colorado Industrial Company, a Colorado corporation (herein-

after called the Industrial Company), party of the second part, Arthur Roeder, as Trustee of the estates of the Fuel and Iron Company and the Industrial Company, appointed and acting as hereinafter in the second recital hereof set forth, party of the third part, The New York Trust Company, a New York corporation, as Trustee, acting as hereinafter in the fourth recital hereof set forth, party of the fourth part, and The Colorado Fuel and Iron Corporation, a Colorado corporation (hereinafter called the New Company), party of the fifth part.

Whereas on August 1, 1934, the Fuel and Iron Company and the Industrial Company (a wholly owned subsidiary of the Fuel and Iron Company), filed petitions for reorganization under Section 77B of the Bankruptcy Act in the United States District Court for the District of Colorado, which petitions were approved by orders duly made by said Court and entered in the proceedings (hereinafter sometimes called the Reorganization Proceedings) therein pending entitled: "In the Matter of The Colorado Fuel and Iron Company and Another, Colorado corporations, Debtors; In Proceedings for Reorganization; Consolidated Cause No. 8081"; and

Whereas said Arthur Roeder (hereinafter called the Trustee) has been appointed and is acting as Trustee of the estates of the Fuel and Iron Company and the Industrial Company under orders duly made and entered in the Reorganization Proceedings; and

Whereas the "Plan of Reorganization of The Colorado Fuel and Iron Company (and the Colorado Industrial Company), dated March 1, 1935" (hereinafter called the Plan), duly proposed by the Fuel and Iron Company and the Industrial Company at a hearing held in the Reorganization Proceedings on April 29, 1935, was duly confirmed by an order (hereinafter called the Confirmation Order) duly made and entered in said proceedings on April 25, 1936, and, by an order (hereinafter called the Transfer Order) duly made and entered in the Reorganization Proceedings on June 20, 1936, the transfer to the New Company of the assets of the Fuel and Iron Company and the Industrial Company pursuant to the Plan and the other proceedings necessary to carry the Plan into effect were authorized and directed; and

Whereas said The New York Trust Company (hereinafter called the Industrial Trustee) is now acting as trustee under an Indenture dated August 1, 1904 (known as the First Mortgage), between the Industrial Company and New York Security and Trust Company, as Trustee, as amended and supplemented by an Indenture dated August 1, 1904, and four Supplemental Mortgages dated June 5, 1907, June 19, 1913, September 10, 1924, and October 27, 1925, respectively, between the Industrial Company and said New York Security and Trust Company or the Industrial Trustee, and by an Indenture dated April 12, 1932, between The Rocky Mountain Coal and Iron Company (a wholly owned subsidiary of the Industrial Company) and the Industrial Trustee (said First Mortgage, as so amended and supplemented, being hereinafter referred to as the First Mortgage); and

Whereas, pursuant to the Transfer Order, the Fuel and Iron Company, the Industrial Company, the Trustee and the Industrial Trustee hereinafter sometimes referred to collectively as the Grantors) were authorized and directed to assign, transfer, convey and deliver to the New Company, by an instrument of conveyance in the form hereof, which was approved by the Transfer Order, all their respective right, title and interest in and to all the assets and properties of every nature and description, tangible and intangible, real, personal or mixed, and wheresoever situated, of the Fuel and Iron Company and the Industrial Company, of the Industrial Trustee, as trustee under the First Mortgage, and of the estates of the Fuel and Iron Company and the Industrial Company and the Trustee, including the rights, privileges, good-will and, in so far as permitted by law, the franchises of the Fuel and Iron Company and the Industrial Company; and

Whereas the execution and delivery of this Indenture by and on behalf of the New Company has been duly authorized by its Board of Directors, and the New Company has in all respects complied with the provisions of the Confirmation Order the Transfer Order and the Plan thereby required to be performed by it prior to the execution and delivery of this Indenture;

Now, Therefore, this Indenture witnesseth that, in consideration of the premises, and of the assumption by the New Company of the obligations and liabilities which by the provisions of the Plan and in conformity with the Transfer Order

the New Company is required to perform or assume, and of the issuance by the New Company of 552,660 shares of Common Stock without par value of the New Company and Warrants (and scrip for Warrants) to purchase 315,379 shares of such Common Stock, pursuant to the Transfer Order and the Plan, and in consideration of other good and valuable consideration paid or to be paid by the New Company, the sufficiency of which is hereby acknowledged by the Grantors, the Fuel and Iron Company, the Industrial Company, the Trustee and the Industrial Trustee (the Grantors herein), in order to carry into effect the Plan and to carry out the Transfer Order, have assigned, transferred, conveyed and delivered, and by these presents do assign, transfer, convey, deliver, give, grant, bargain, sell, alien, remise, release, quitclaim, set over and confirm unto The Colorado Fuel and Iron Corporation, a Colorado corporation (the New Company named above), its successors and assigns, all their respective right, title and interest in and to all the assets and properties of every nature and description, tangible and intangible, real, personal or mixed, wheresoever situated, and whether in the possession of the Grantors or any of them, or in transit, or in the possession of any other person, firm or corporation, of the Fuel and Iron Company and the Industrial Company, of the Industrial Trustee, as trustee under the aforesaid First Mortgage, and of the estates of the Fuel and Iron Company, the Industrial Company and the Trustee, except as hereinafter otherwise expressly provided, including, but without intending thereby to limit the generality of the foregoing description, the following:

1. All ore, coal, coke, coke by-products, limestone, steel, iron, lumber, fuel, oil and other materials and supplies, finished and semi-finished products of iron and steel, work in process, inventory, railroad equipment, wagons, cars, trucks, automobiles, engines, motors, parts, dies, patterns, rolls, tools and other equipment, drawings, furniture, office equipment and supplies, and all other tangible personal property, goods and chattels;

2. All claims, demands, rights, choses in action, bills and notes, accounts receivable, credits, debts, bills, discounts and deferred items, and the proceeds thereof, all policies of insurance and fidelity and other bonds and all rights and claims thereunder, including the cash surrender value thereof, all

muniments of title to and evidences of ownership of the properties and assets of the Grantors hereby assigned, transferred and conveyed, or intended so to be, and all books of account and records of the Fuel and Iron Company, the Industrial Company and the Trustee; provided, however, that the Trustee and his authorized representatives shall have access to said books of account for the purpose of closing the accounts of the Trustee and as may be required by him for completing and closing the affairs of the Reorganization Proceedings;

3. All cash in banks remaining after payment of all outstanding checks drawn against the same, and all cash on hand, including any and all balances of funds belonging to the Grantors or any of them in the possession of any of their agents or employees;

4. All stocks, bonds and other securities and investments, including 1,000 shares, being all the issued and outstanding shares of stock, of The Colorado & Wyoming Railway Company, a Colorado corporation, and $4,500,000 principal amount of First Mortgage 4% Bonds, due March 1, 1953, of said Company;

5. All contracts, agreements, licenses, options and other arrangements, whether for the purchase of materials, supplies or equipment, or for the manufacture, sale or distribution of the products of the Fuel and Iron Company or the Industrial Company, or for any purpose whatsoever, not fully performed by all of the parties thereto at the date hereof, and all monies due or to become due under said contracts;

6. All patents, patent rights, copyrights, trade-marks, trade names and applications for any and all thereof, all processes and formulae, all designs and drawings, and all licenses and shop rights under any patents, patent rights, copyrights, trade-marks and trade names, and applications for any and all thereof;

7. All moneys to be realized on account of any right of the Fuel and Iron Company, the Industrial Company and the Trustee to any refund on account of any taxes paid by them or any of them;

8. All rights, privileges, good-will and trade connections of the Fuel and Iron Company and the Industrial Company,

including the right to use the names "The Colorado Fuel and Iron Company", "The Colorado Industrial Company" and any combination thereof, in so far as the Fuel and Iron Company, the Industrial Company and the Trustee have such right, and, in so far as permitted by law, the franchises of the Fuel and Iron Company and the Industrial Company;

9. All real property and real estate and all right, title, interest and estate of the Grantors of every kind and description whatsoever in, or in any way related to, real property or real estate, wheresoever situated, including, but not limited to, fees, leaseholds, mining and mineral rights, chattels real, easements, appurtenances and servitudes of every kind whatsoever;

10. All buildings, plants, structures, fixtures, mines, improvements and appurtenances now erected on, attached to or connected with any such real property or real estate, including all equipment, machinery, tools, appliances and implements belonging thereto; and

11. All other assets and properties of every kind and description, wheresoever situated, belonging to the Grantors or included in the estate of the Fuel and Iron Company, the Industrial Company or the Trustee.

To have and to hold all the assets and properties hereinabove described and hereby assigned, transferred and conveyed, and delivered, or intended so to be, unto the New Company, its successors and assigns, forever, free, clear and discharged of and from any and all claims, liens, rights, interests, equities or equitable or statutory rights of redemption of the Fuel and Iron Company and the Industrial Company, their creditors and stockholders, and of the Industrial Trustee, as trustee under the First Mortgage, and of each of the parties to the Reorganization Proceedings and of the Trustee and of all persons, firms and corporations, claiming by, through or under them, or any of them, in or to said assets and properties and every part and parcel thereof, subject, however, (a) as to any of the properties or assets hereby transferred, assigned and conveyed, or intended so to be, which are described therein or are subject thereto, to the lien of the General Mortgage, dated February 1, 1893, between the Fuel and Iron Company and Central Trust Company of New York

(now Central Hanover Bank and Trust Company), as Trustee, (b) to each and all of the terms, provisions, obligations and conditions of the Confirmation Order, of the Transfer Order, and of the Plan, which are hereby specifically accepted by the New Company for itself, its successors and assigns, and (c) to the rights and powers of the United States District Court for the District of Colorado under the Confirmation Order, the Transfer Order and the Plan and pursuant to the provisions of Section 77B of the Federal Bankruptcy Act, as amended.

The parties hereto further mutually covenant and agree as follows:

Section 1. This Indenture is not intended to deprive the Trustee of any rights of defense, set-off or counter-claim which he may have against any creditors of the Fuel and Iron Company or the Industrial Company, and, to the extent that such rights are available to the Trustee, the claims upon which such rights rest are not included in the assignments, transfers and conveyances made by this Indenture.

Section 2. This Indenture is intended to convey to the New Company only the right, title and interest of the Grantors in and to the property covered hereby, and no warranty of any character, either express or implied, is included herein.

Section 3. No personal liability, whatsoever, in favor of the New Company or of any subsequent transferee of the assets and properties covered hereby, or any part thereof, shall attach to or be incurred by the Trustee or the Industrial Trustee or by any officer or director of the Fuel and Iron Company or the Industrial Company or Industrial Trustee, or any of them, under or by reason of this Indenture or the recitals herein contained or any deeds, conveyances, bills of sale, endorsements, checks or other instruments of assignment, transfer and conveyance for the purpose of making effective the assignment, transfer and conveyance of said assets and properties; all such personal liability, if any, being hereby expressly waived and released.

Section 4. The New Company will be liable and responsible for taxes, if any, payable on, or in respect of, the assignment, transfer and conveyance of any of the assets and properties

covered hereby, in so far as such taxes, if any, are not paid by the Trustee at or prior to the delivery hereof.

Section 5. The Grantors hereby severally constitute and appoint the New Company, its successors and assigns, the true and lawful attorney or attorneys of the Grantors and each of them, with full power of substitution, for them and each of them and in the name and stead of each of them, or otherwise, but on behalf and for the benefit of the New Company, its successors and assigns, to demand and receive from time to time any and all assets and properties, tangible and intangible, hereby assigned, transferred and conveyed, or intended so to be, and to give receipts and releases for and in respect of the same or any part thereof, and from time to time to institute and prosecute in the name of the Grantors, or any of them, or otherwise, but at the expense and for the benefit of the New Company, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the New Company, its successors or assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in and to the assets and properties hereby assigned, transferred and conveyed, or intended so to be, and to defend and compromise any and all actions, suits or proceedings, in respect of any of said assets or properties, and to do all such acts and things in relation thereto as the New Company, its successors or assigns, shall deem desirable; the Grantors hereby declaring that the appointment hereby made and the powers hereby granted are coupled with an interest and are and shall be irrevocable by the Grantors or any of them or by the dissolution of the corporate Grantors or the discharge of the Trustee or in any other manner or for any reason.

Section 6. The Fuel and Iron Company, the Industrial Company and the Trustee further authorize the New Company, its successors and assigns, to receive and open all mail, telegrams and other communications and all express and other packages addressed to the Fuel and Iron Company, the Industrial Company or the Trustee and to retain the same in so far as they relate to the properties and assets hereby assigned, transferred and conveyed, or intended so to be, the New Company hereby agreeing to forward to the Trustee with reasonable dispatch all mail, telegrams, communications

and express or other packages so addressed but not relating to said property or assets. The foregoing shall constitute full authorization to the postal authorities, all telegraph and express companies and all other persons to make delivery of such items to the New Company, its successors and assigns.

Section 7. The Grantors and each of them will, whenever and as often as requested so to do by the New Company, its successors or assigns, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, at the expense of the New Company, any and all such other and further assignments (including assignments of all patents herein conveyed or intended so to be), transfers, conveyances (including deeds sufficient in form to convey to the New Company all real property, real estate or any part or parcel thereof or any interest therein hereby conveyed or intended so to be), confirmations, powers of attorney, and any other papers and documents or instruments of further assurance, approvals and consents, whether by the Fuel and Iron Company, the Industrial Company, the Industrial Trustee, the Trustee or others, as the New Company, its successors and assigns, may hereafter deem necessary or proper in order to keep, insure and perfect the assignment, transfer and conveyance to the New Company, its successors and assigns, of all the right, title and interest of the Grantors in and to any and all of the assets, properties, business and good will hereby assigned, transferred and conveyed, or intended so to be.

Section 8. The New Company agrees that it will issue and deliver, as provided in the Transfer Order and as further consideration for the assets and properties hereby assigned, transferred, conveyed and delivered, $11,053,200 principal amount of 5% Income Mortgage Bonds of the New Company, described in the Plan, as soon as the holder of all the issued and outstanding shares of Common Stock of the New Company shall have voted such shares, at a meeting of shareholders of the New Company to be called for the purpose, to authorize and consent to the creation by the Board of Directors of the New Company of an Income Mortgage in the form approved by the Transfer Order to secure said Income Mortgage Bonds.

Section 9. The New Company hereby assumes the performance of all obligations by the Plan and by the Transfer

Order provided to be or to be deemed to be assumed by the New Company, including, without limiting the generality of the foregoing, all liability for the payment of (a) all claims specified in clauses (1) to (6), inclusive, of Article Three of the Transfer Order, and (b) all amounts which may hereafter be allowed by the United States District Court for the District of Colorado as compensation for services rendered or as reimbursement for expenditures incurred in connection with the Reorganization Proceedings and the Plan, by the Trustee, officers, parties in interest, depositaries, the Reorganization Managers, the Committees or their representatives, creditors or stockholders, and the attorneys or agents of any of the foregoing and of the Fuel and Iron Company and the Industrial Company, which claims and allowances the New Company will pay in cash in full.

Section 10. This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

In Witness Whereof, the Fuel and Iron Company, the Industrial Company, the Industrial Trustee and the New Company have caused this instrument to be executed in their respective corporate names by their respective presidents or one of their respective vice-presidents, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries or one of their respective assistant secretaries, and the Trustee has hereunto set his hand and seal, all as of the day and year first above written.

THE COLORADO FUEL AND IRON COMPANY,
By THOMAS AURELIUS,
Vice-President.

(Corporate Seal).

Attest:
D. C. McGREW,
Secretary.

Signed, sealed and delivered by The Colorado Fuel and Iron Company in the presence of:

FRED FARRAR
A. M. RIDDLE
Attesting Witnesses.

THE COLORADO INDUSTRIAL COMPANY,
By S. G. PIERSON,
Vice-President.

(Corporate Seal)

Attest:
D. C. McGREW,
Secretary.

Signed, sealed and delivered by The Colorado Industrial Company in the presence of:

FRED FARRAR
A. M. RIDDLE
Attesting Witnesses.

ARTHUR ROEDER (L.S.)

(As Trustee in the Reorganization Proceedings referred to in the foregoing Indenture, and not individually).

Signed, sealed and delivered by Arthur Roeder in the presence of:

FRED FARRAR
A. M. RIDDLE
Attesting Witnesses.

THE NEW YORK TRUST COMPANY,
(As Trustee under the First Mortgage referred to in the foregoing Indenture, and not individually).
By A. C. DOWNING,
Vice-President.

(Corporate Seal).

Attest:
R. P. MERRICK,
Assistant Secretary.

Signed, sealed and delivered by The New York Trust Company in the presence of:

ALAN M. COOPER,
F. M. AUKAMP,
Attesting Witnesses.

THE COLORADO FUEL AND IRON CORPORATION,
By NEWELL H. ORR,
Vice-President.

(Corporate Seal).

Attest:
TERRELL C. DRINKWATER,
Assistant Secretary.

Signed, sealed and delivered by The Colorado Fuel and Iron Corporation in the presence of:

FRED FARRAR,
A. M. RIDDLE,
Attesting Witnesses.

[Verifications omitted.]

Exhibit M.

In the District Court of the United States
For the District of Colorado.

In the Matter of The Colorado Fuel and Iron Company, and Another, Colorado corporations, Debtors.	In Proceedings for Reorganization Consolidated Cause No. 8081.

Final Report
of
Arthur Roeder, as Trustee of the Estates of
The Colorado Fuel and Iron Company and
The Colorado Industrial Company.

To the Honorable J. Foster Symes, Judge of the United States District Court for the District of Colorado:

Arthur Roeder, Trustee of the estates of The Colorado Fuel and Iron Company and The Colorado Industrial Company, Debtors in the above entitled proceeding, respectfully submits this Final Report of his administration of the estates of said debtors.

In order that this Final Report may be more clearly understood, said Trustee respectfully directs the attention of the Court to certain matters of record:

That the books of the Receiver in the prior receivership proceedings of The Colorado Fuel and Iron Company were closed as of midnight July 31, 1934, and under date of September 18, 1934, Price, Waterhouse & Company, certified public accountants, rendered a report of their audit of said books, which report was filed in this cause on October 31, 1934, as Schedule Exhibit 13. This showed the closing entries of the Receiver for the period and the opening entries of the reorganization period.

Thereafter and from month to month the Trustee rendered to this Court a report showing his receipts and disbursements for each month of the period of the reorganization. These reports are a matter of record in this cause.

That on March 12, 1936, the Trustee filed a report entitled "Interim Report", which included, among other things, profit and loss statement for the receivership period; a profit and loss statement of the Trustee for the period August 1, 1934 to July 31, 1935; a profit and loss statement of the Trustee from August 1, 1935 to December 31, 1935; and a consolidated balance sheet of The Colorado Fuel and Iron Company and its subsidiaries as of December 31, 1935.

That on February 18, 1937, the Trustee filed in this cause a report entitled "Second Interim Report", dated February 16, 1937, in which the Trustee reported that pursuant to the order of confirmation entered herein on April 25, 1936, and the order of Court directing the transfer of assets unto The Colorado Fuel and Iron Corporation (the new corporation) entered herein June 20, 1936, all properties and assets of The Colorado Fuel and Iron Company and The Colorado Industrial Company and of the Trustee and The New York Trust Company, as Trustee, under the mortgage, or deed of trust, of The Colorado Industrial Company dated August 1, 1904, and all supplements thereto, had been sold, conveyed, assigned and transferred unto The Colorado Fuel and Iron Corporation as of July 1, 1936, and that since said date the said new corporation has conducted, managed and operated said properties and the business relating thereto. Accompanying said

Second Interim Report and attached thereto was a report of Price, Waterhouse & Company, certified public accountants, dated October 22, 1936, including a summary of transactions of the Trustee; balance sheets as of June 30, 1936; a statement of profit and loss for the period August 1, 1934 to June 30, 1936; and various other financial data with respect to The Colorado Fuel and Iron Company and its subsidiaries and the operations and transactions of the Trustee. This report indicated the closing entries of the books of Arthur Roeder as Trustee, except for the payment of such additional amounts as might thereafter be ordered to be paid in the reorganization proceedings, including the allowance of fees and expenses of parties in interest and for counsel in these proceedings and the adjustment and payment of taxes accrued against the Trustee, and certain other deferred matters.

The Trustee in that report stated that he could not at that time render a final report pending the determination of various deferred matters and the execution and delivery of numerous formal deeds of conveyance and other instruments.

Subsequent to the date upon which said Second Interim Report was filed and on March 25, 1937, this Court entered an order directing the payment of certain fees and expenses allowed to parties in interest and counsel, etc., in the reorganization proceedings. From this order the General Mortgage Bondholders' Protective Committee and Sullivan & Cromwell, their counsel, appealed to the Circuit Court of Appeals for the Tenth Circuit. Pending said appeal, however, The Colorado Fuel and Iron Corporation, the new corporation, in accordance with the order of Court, paid and discharged all of the amounts allowed as fees and expenses by said order of March 25, 1937, except the amounts allowed to General Bondholders' Protective Committee and Sullivan & Cromwell, and on July 8, 1937, The Colorado Fuel and Iron Corporation filed in these proceedings a report showing compliance with said order by the payment of the aggregate sum of $200,616.75 for fees and $22,287.61 as reimbursement for expenses to claimants named in said order.

In due course the appeal of Sullivan & Cromwell, being Cause No. 1582 in the United States Circuit Court of Appeals for the Tenth Circuit, and the appeal of Thatcher M. Brown, Harold Kountze, James B. Mabon and John C. Trap-

hagen, being the General Bondholders' Protective Committee, Cause No. 1583, were heard and on April 13, 1938 an opinion was handed down by the Circuit Court of Appeals for the Tenth Circuit affirming the order of this Court from which the appeals in question were taken.

On June 15, 1938, mandate having been sent down from the Circuit Court of Appeals for the Tenth Circuit to the Clerk of this Court, The Colorado Fuel and Iron Corporation paid unto General Bondholders' Protective Committee the sum of $2,105.59, that is, $500.00 for fees and $1,605.59 for reimbursement of expenses; and on said date paid unto Sullivan & Cromwell the sum of $2,629.70, that is $2,500.00 for fees and $129.70 reimbursement of expenses as allowed by the aforesaid order of Court entered herein June 25, 1937. These payments complete the payments allowed by said order.

Trustee further states that the deed from The Colorado Fuel and Iron Company, The Colorado Industrial Company, Arthur Roeder, as Trustee, and The New York Trust Company, as Trustee, to The Colorado Fuel and Iron Corporation, dated as of July 1, 1936, mentioned in the Second Interim Report of the Trustee, as above mentioned, was a blanket instrument transferring and conveying all properties and assets of The Colorado Fuel and Iron Company and of The Colorado Industrial Company and of Arthur Roeder as Trustee thereof, and all right, title and interest of The New York Trust Company, as Trustee under The Colorado Industrial Company Mortgage, and supplements thereto, unto The Colorado Fuel and Iron Corporation, but without specific description of the properties thereby conveyed or transferred. That thereafter this deed, which is entitled "Indenture and Bill of Sale", was supplemented by a formal release of the mortgage of The Colorado Industrial Company dated August 1, 1904, and all supplements thereto, executed by The New York Trust Company, as Trustee, under date of January 11, 1937. This release was duly delivered to The Colorado Fuel and Iron Corporation and was filed for record in each of the counties in each State in which the original mortgage or supplements thereto had been recorded. And, in addition thereto, The Colorado Fuel and Iron Company and The Colorado Industrial Company executed deeds in which Arthur Roeder, as Trustee, joined as a grantor, specifically conveying in each county in

each State in which said two companies were the record owner of property, the properties belonging to said companies and the Trustee in each of said counties and States. That these deeds, were in due course filed for record. In addition to these deeds, appropriate assignments, bills of sale, etc., were executed and delivered. Thus all of the properties and assets of The Colorado Fuel and Iron Company and of The Colorado Industrial Company and of Arthur Roeder, as Trustee thereof, were transferred, conveyed or assigned unto The Colorado Fuel and Iron Corporation.

The Trustee further reports that the Income Mortgage of The Colorado Fuel and Iron Corporation to The Chase National Bank of the City of New York and Carl E. Buckley, Trustees, which has heretofore been approved by this Court, has been filed for record in each county and State in which the property described in said mortgage is situated.

The Trustee further reports with respect to the matters required of the new corporation by Article Two of the order of Court dated June 20, 1936 that The Colorado Fuel and Iron Corporation by an agreement dated, as of July 1, 1936, entered into with Central Hanover Bank and Trust Company, as Trustee, formally assumed, pursuant to the plan of reorganization, the due and punctual payment of principal and interest upon the bonds of The Colorado Fuel and Iron Company, generally known as The Colorado Fuel and Iron General Bonds, dated as of February 1, 1893, to the extent that such bonds are now outstanding and similarly assumed all covenants and conditions of the mortgage or deed of trust and supplements thereto given to secure said bonds. All interest accrued on said bonds has been paid.

Further, The Colorado Fuel and Iron Corporation, in accordance with the plan of reorganization, issued unto J. & W. Seligman and Co., Reorganization Managers, a temporary certificate for 552,651 shares of its stock without par value and 9 certificates for such stock in temporary form for the purpose of qualifying its directors. That thereafter these temporary certificates were cancelled and arrangements were made for the issuance of permanent certificates in the amount of 552,660 shares to be issued with Income Bonds in accordance with the plan of reorganization to the holders of Industrial Bonds. Similarly warrants, and scrip for warrants, rep-

resenting the right to purchase, according to the terms provided in the plan of reorganization, 315,379 shares of stock of the new corporation, were provided for. The Chase National Bank of the City of New York was appointed Transfer Agent for the stock of the new corporation and Bankers Trust Company, of New York, was appointed Registrar of the stock of the new corporation. The Chase National Bank of the City of New York was appointed Registrar of the Income Bonds of the New Corporation.

In accordance with the plan of reorganization, the Reorganization managers appointed The Chase National Bank of the City of New York and The International Trust Company, of Denver, Colorado, as distributing agents to distribute the stock and the Income Bonds of the new company in exchange for the surrender of the bonds of The Colorado Industrial Company and to distribute the warrants (and scrip for warrants) in accordance with the plan of reorganization in exchange for the stock of the old company.

As of June 30, 1938, $11,029,200 face value of Income Bonds and 551,460 shares of stock of the new corporation had been issued in exchange for Colorado Industrial Bonds, leaving $24,000 of Income Bonds and 1200 shares of stock yet to be issued in exchange for Industrial Bonds. 465 shares of stock had been issued for cash at the rate of $35.00 per share, by the exercise of warrants. The amount thus realized, was, by the Trustee under the Income Mortgage, used to retire $18,000 face value of Income Bonds in accordance with the plan of reorganization and the Income Mortgage. As of June 30, 1938, only sixty Colorado Industrial Bonds remained outstanding not yet exchanged for the new stock and the new Income Bonds.

As of said date, that is, June 30, 1938, all of the outstanding preferred stock of the old company, except 1,714 shares, out of a total of 20,000 shares, and all of the outstanding common stock of the old company, except 20,572 shares, out of a total of 340,505 shares, had been exchanged by the holders thereof for warrants or scrip for warrants in accordance with the plan of reorganization.

Trustee states that some additional time may elapse before all of the Colorado Industrial Bonds and all of the stock, both

preferred and common, of the old company are surrendered pursuant to the plan of reorganization.

On July 6, 1937, an order was entered in this cause allowing The Chase National Bank of the City of New York and The International Trust Company, of Denver, Colorado, certain compensation for services rendered and expenses incurred in effecting the exchange of the stock of the new corporation and the Income Bonds of the new corporation for the bonds of The Colorado Industrial Company and the warrants of the new corporation for the stock of the old company. Pursuant to this order there has been paid in due course unto The International Trust Company, of Denver, Colorado, to May 10, 1938, a total of $1,862.26, that is, for the handling of 6,040 pieces, fees of $1,510.00, and for postage and other expenses $352.26; and there has been paid to The Chase National Bank of the City of New York, to May 31, 1938, a total of $15,017.03, that is, for handling 57,188 pieces, fees of $14,297.00, and for postage and other expenses $720.03.

The Trustee further respectfully reports pursuant to Article Three of the order of Court dated June 20, 1936 that the new corporation, The Colorado Fuel and Iron Corporation, has paid the following:

1. All claims of the United States of America and of the State of Colorado, with this exception, that the final income tax return of the Trustee for a period ending June 30, 1936 has not yet been reviewed by the Bureau of Internal Revenue and some adjustments may result on the final determination of the liability of the Trustee in that regard.

2. All workmen's compensation claims have been paid as accrued.

3. All obligations of Arthur Roeder as Receiver during the receivership proceedings have been paid and discharged.

4. All obligations of The Colorado Fuel and Iron Company to its subsidiaries have been paid, or otherwise liquidated.

5. All current liabilities of The Colorado Fuel and Iron Company incurred in the ordinary conduct of its business prior to the appointment of the Receiver August 1, 1933 have been paid and discharged.

6. All claims adjusted or liquidated and allowed by the Court arising from the disaffirmance of contracts by the Receiver or the Trustee have been paid or discharged.

7. All amounts allowed as compensation for services rendered or as reimbursement for expenditures incurred in connection with the receivership proceedings and reorganization proceedings have been paid with the exception of the amounts currently earned by The Chase National Bank of the City of New York and The International Trust Company, of Denver, Colorado, as distributing agents.

Trustee further reports that on September 23, 1936, he filed in these proceedings a report dated September 23, 1936, showing that notices, dated September 1, 1936, had been mailed to all known stockholders and holders of Colorado Industrial Bonds to the effect that the new securities to be issued pursuant to the plan of reorganization were ready for distribution. Reference is made to said report for further details.

Trustee respectfully shows that interest at the rate of 5% per annum for the calendar year 1936, representing the first coupon, on the entire authorized amount of the Income Bonds of the new corporation was by the Board of Directors of the new corporation at a meeting held on March 11, 1937, declared due and payable on April 1, 1937. And thereafter said interest was paid to the trustee, as paying agent, in due course for distribution to the bondholders. Similarly, the interest for the full amount of 5% for the year 1937 on the entire authorized amount of said Income Bonds was by the Board of Directors at a meeting held January 28, 1938, declared due and payable April 1, 1938 and the amount thereof was thereafter in due course paid to the trustee, as paying agent, for distribution to the bondholders. That prior to the declaration of the corporation that said interest was due and payable for the years 1936 and 1937, all terms and conditions of the plan of reorganization and the income mortgage with respect to the available net income, as defined in Section 8, Article 2, and the consolidated net current assets, as defined in Section 9, of Article 2 of the Income Mortgage, were met and fulfilled and reports to that effect were submitted to the Board of Directors of The Colorado Fuel and Iron Corporation by Peat, Marwick, Mitchell & Company, certified public accountants. Copies of the reports of said accountants dated

February 26, 1937 and February 15, 1938 are attached hereto and made a part hereof as Exhibits "A" and "B", respectively. Sections 8 and 9, Article Two of the Income Mortgage were copied from and form a part of Exhibit "C" of the plan of reorganization.

Trustee further reports that on March 11, 1937, after providing for the payment of interest on the Income Bonds on April 1, 1937, the Board of Directors of The Colorado Fuel and Iron Corporation declared a dividend of $1.00 per share, payable March 31, 1937. That this is the only dividend which has been paid on the stock of the new corporation.

The Trustee further respectfully shows unto the Court that the matters herein reported by him which are more peculiar to the duties and obligations of The Colorado Fuel and Iron Corporation, are within the knowledge of your Trustee inasmuch as he is now the president of that corporation. This report, although entitled Final Report of Trustee, incorporates for the information of the Court and all parties interested, matters and things which were, by the plan of reorganization and orders of Court relating thereto, the obligations or duties of the new corporation.

This report does not purport to include the details of many of the transactions undertaken in the consummation of the plan of reorganization, or of certain corporate activities which have no immediate bearing upon the administration of the estates of the Debtors by the Trustee. Inasmuch, however, as it does summarize the administration of the Trustee, and, in connection with previous reports, gives a full accounting of his financial transactions, it is respectfully submitted to the Court as the Trustee's final report.

Trustee, therefore, prays that he be discharged as Trustee of the estates of said Debtor Companies and that the surety upon his bonds be discharged from further liability.

Dated at Denver, Colorado, September 12th, 1938.

ARTHUR ROEDER,
Trustee of the Estates of The Colorado Fuel and Iron Company, and The Colorado Industrial Company.

FRED FARRAR,
Attorney for Trustee.

[Verification omitted.]

Filed Sep. 13, 1938, 11:10 A. M. George A. H. Fraser, Clerk.

Exhibit N.

In the District Court of the United States for the District of Colorado.

In the Matter of The Colorado Fuel and Iron Company, and Another, Colorado corporations, Debtors.	In Proceedings For Reorganization. Consolidated Cause No. 8081.

Final Decree.

This Cause came on to be further heard on the 12th day of October, 1938, upon the final report of Arthur Roeder, as Trustee of the Estates of The Colorado Fuel and Iron Company and The Colorado Industrial Company, and upon consideration thereof, It Is Ordered, Adjudged, and Decreed as follows:

That all debts and liabilities of The Colorado Fuel and Iron Company and of The Colorado Industrial Company, Debtors, and all rights and interests of the stockholders of said Debtors, and each of them, be and the same are discharged, except as provided in the Plan of Reorganization of said Debtors, and in the orders of Court relating thereto, more particularly the order entered herein on April 25, 1936 confirming said Plan of Reorganization, and the order entered herein on June 30, 1936 approving the form of documents and directing the transfer of assets to and the issue of securities and assumptions of liabilities by The Colorado Fuel and Iron Corporation, the new corporation provided for and organized pursuant to said Plan of Reorganization. All creditors and stockholders of said Debtors and each of them are hereby enjoined from enforcing or attempting to enforce in any manner or form whatsoever any rights, claims or demands against said Debtors, or against The Colorado Fuel and Iron Corpora-

tion, or the officers, agents, or stockholders thereof, or against the assets of The Colorado Fuel and Iron Corporation, save and except in the manner and to the extent provided for in said Plan of Reorganization and the orders of Court above mentioned.

It Is Further Ordered, Adjudged and Decreed That Arthur Roeder, as Trustee for the Estates of The Colorado Fuel and Iron Company and The Colorado Industrial Company, be and he hereby is finally discharged as such Trustee and from any further duties, liabilities or obligations as such Trustee, and the surety upon his bonds is hereby discharged from further liability.

It Is Further Ordered, Adjudged and Decreed That these proceedings be terminated and the Estates of the Debtors herein be closed, Reserving Unto This Court However jurisdiction to require compliance by The Colorado Fuel and Iron Corporation, the new corporation, the Reorganization Managers, and all others, of the performance and fulfillment of their respective duties, obligations and assumptions as provided in the Plan of Reorganization and the orders of Court relating thereto.

Dated at Denver, Colorado, as of October 12, 1938.

J. FOSTER SYMES, Judge:

Filed Nov. 18, 1938, 2:30 P. M. George A. H. Fraser, Clerk.

Designation of Additional Portions of Record to Be Contained in Record on Review.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause, in addition to those already designated by the Appellant, the Commissioner of Internal Revenue, in connection with the petition for review by the said Circuit Court of Appeals for the Tenth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Stipulation of Facts, together with the exhibits attached thereto.

2. This designation of additional portions of record to be contained in record on review.

(s) STEPHEN H. HART,
Counsel for the Respondent on Review.

No objection,
(s) J. P. WENCHEL,
Attorney for Petitioner.
(Filed Jan. 21, 1941.)

Affidavit of Mailing.

State of Colorado, City and County of Denver, ss.

Stephen H. Hart, of lawful age, being on oath first duly sworn, deposes and says that he is one of the attorneys for the Respondent on Review, the Petitioner before the United States Board of Tax Appeals, and that he served a copy of foregoing Designation of Additional Portions of Record to be Contained in Record on Review, upon J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, by mailing copies to him on January 17, 1941, registered mail, postage prepaid, addressed to the Bureau of Internal Revenue, Washington, D. C.

(s) STEPHEN H. HART.

Subscribed and sworn to before me this 17th day of January, 1941.

My commission expires January 15, 1942.

(s) LOUISE HATFIELD,
(Seal) Notary Public.
Filed Jan. 21, 1941.

Order Enlarging Time.

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation and delivery of the record *sur* petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Tenth Circuit, be and it is hereby extended to Feb. 24, 1941.

(signed) CHARLES P. SMITH,
Member.

Dated: Washington, D. C.,
Dec. 21, 1940.
jd

Now, Feb. 14, 1941, the foregoing order certified from the record as a true copy.

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Certificate.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 193, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 14th day of February, 1941.

B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.

(Seal)

Filed Feb. 17, 1941. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz.:

Order of submission

Thirty-sixth Day, April Term, Wednesday, June 25th, A. D. 1941

Before Honorable ORIE L. PHILLIPS, Honorable WALTER A. HUXMAN, and Honorable ALFRED P. MURRAH, Circuit Judges

This cause came on to be heard and was argued by counsel, Arthur A. Armstrong, Esquire, appearing for petitioner, James B. Grant, Esquire, appearing for respondent.

On motions, petitioner was granted leave to file a reply brief herein within ten days from this day and respondent was granted leave to file an answer thereto within ten days thereafter.

Thereupon this cause was submitted to the court.

United States Circuit Court of Appeals, Tenth Circuit

No. 2270. APRIL TERM, 1941

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

CEMENT INVESTORS, INC., RESPONDENT

On Petition to Review the Decision of the United States Board of Tax Appeals

July 24, 1941

Arthur A. Armstrong, Spec. Asst. to the Atty. Gen. (Samuel O. Clark, Jr., Asst. Atty. Gen., and Sewall Key and Samuel H. Levy, Spec. Assts. to the Atty. Gen., were with him on the brief) for petitioner

James B. Grant (Lewis and Grant, and Stephen H. Hart were with him on the brief) for respondent

Before PHILLIPS, HUXMAN, and MURRAH, Circuit Judges

PHILLIPS, Circuit Judge, delivered the opinion of the court

The Colorado Industrial Company [1] was a corporation organized under the laws of Colorado. On August 1, 1904, Industrial issued

[1] Hereinafter called Industrial.

its five percent first mortgage bonds[3] due August 1, 1934, and secured by a deed of trust on its property. The total face value of Industrial's bonds held by the public on August 1, 1934, was $27,633,000.

The Colorado Fuel and Iron Company[4] was a corporation organized under the laws of Colorado. It was engaged in the manufacture and sale of iron and steel products. It owned all the capital stock of Industrial consisting of 200 shares, and had unconditionally guaranteed both the principal and interest of Industrial's bonds. On August 1, 1933, Industrial was not engaged in any active business and had no assets of any substantial value, having transferred substantially all of its assets to the Colorado Company in 1913.

On August 1, 1933, Industrial and the Colorado Company defaulted in the payment of the annual interest due on Industrial's bonds.

On August 1, 1933, the stock and securities of the Colorado Company outstanding in the hands of the public were its general mortgage five percent bonds[5] of the face value of $4,500,000, secured by a mortgage on its property, 20,000 shares of eight percent cumulative preferred stock, each of the par value of $100, and 340,505 shares of common stock, of no par value. Dividends were not paid on the preferred stock after November 25, 1931. On August 1, 1933, the Colorado Company defaulted in the payment of the semiannual interest due on the general bonds. On that date, a receiver for the property of the Colorado Company was appointed by the District Courts of the United States for the Districts of Colorado and Wyoming.

On August 1, 1934, Industrial and the Colorado Company, both being in default in the payment of the principal and interest due on Industrial's bonds, filed petitions for reorganization in the District Court of the United States for the District of Colorado under § 77B of the Bankruptcy Act. The petitions were approved and Arthur Roeder was appointed trustee.

On August 1, 1936, Cement Investors, Inc.,[6] a corporation organized under the laws of Delaware, owned Industrial's bonds of the face value of $44,000.

On March 12, 1935, a plan of reorganization was filed in the bankruptcy proceedings. It provided for the organization of the Colorado Fuel and Iron Corporation,[7] authorized to issue 1,000,000 shares of stock without par value and five percent income mort-

[3] Hereinafter called Industrial's bonds.
[4] Hereinafter called the Colorado Company.
[5] Hereinafter called general bonds.
[6] Hereinafter called the taxpayer.
[7] Hereinafter called the Colorado Corporation.

gage bonds [7] of the face value of $11,053,200. It further provided that the Colorado Corporation should assume the payment of the general bonds which were not disturbed in the reorganization; [8] that all of the income bonds and 552,660 shares of the capital stock of the Colorado Corporation should be issued in exchange for the defaulted Industrial's bonds in the ratio of $400 face value of income bonds and 20 shares of stock for each $1,000 face value of Industrial's bonds. The plan declared that it gave the entire ownership and control of the Colorado Corporation to the Industrial bondholders. It recognized no present equity in the stockholders. However, it made provision for them to regain an equity by providing that warrants should be issued to the holders of preferred and common stock of the Colorado Company entitling them to purchase, on or before February 1, 1950, common stock in the Colorado Corporation at $35 per share in the following ratios: For each share of Colorado Company preferred three shares of Colorado Corporation and for each share of Colorado Company common three-fourths of one share of Colorado Corporation. The subscription price was considerably higher than the open market price for the shares of the Colorado Corporation at the date of the consummation of the plan. The plan was duly accepted by the bondholders and shareholders of Industrial and the Colorado Company. On April 25, 1936, the court entered its order confirming the plan of reorganization. In the order the court found that Industrial and the Colorado Company had been in default on Industrial's bonds since August 1, 1934, and since that date had been unable to meet their debts as they matured, and that the plan was fair and equitable and did not discriminate unfairly in favor of any class of creditors or stockholders.

The Colorado Corporation was organized pursuant to the plan and on June 20, 1936, the court entered its order directing that on July 1, 1936, the Colorado Company, Industrial, the reorganization trustee of both, and the New York Trust Company, as trustee under Industrial's mortgage, should convey all their right, title, and interest in all of the assets of the Colorado Company and Industrial to the Colorado Corporation, and that the income bonds and 552,660 shares of the Colorado Corporation should be distributed to the holders of Industrial's bonds in exchange therefor. All of such assets were transferred to the Colorado Corporation and its bonds and stock were issued to the holders of Industrial's bonds in exchange therefor. The taxpayer surrendered Industrial's bonds of the face value of $44,000 in exchange for

[7] Hereinafter called income bonds.
[8] Under order of the court the past-due interest and current interest on the general bonds had been paid by the trustee.

$17,600 face value income bonds and 880 shares of the Colorado Corporation.

The 552.660 shares of the Colorado Corporation were issued to holders of Industrial's bonds in exchange therefor. No stock was issued to parties other than holders of Industrial's bonds until October 23, 1936, and by June 30, 1938, only 465 shares had been issued to holders of warrants.

The capital stock of Industrial was cancelled and the mortgage securing the Industrial bonds was satisfied and discharged.

The warrants provided that the holders thereof should have no voting rights or other rights whatsoever as stockholders of the Colorado Corporation.

The fair market value of new securities received by the taxpayer was $37,884, exceeding the cost basis of its Industrial's bonds by $22,990.75.

The Commissioner determined deficiencies aggregating $16,985.03. The taxpayer admitted liability for $2,559.02. On petition for redetermination, the Board found a deficiency in the latter amount and entered its order accordingly.

This is a petition to review the order of the Board.

The pertinent statutes are set out in the margin.[9]

The elements which constitute a nontaxable exchange under § 112 (b) (5) are that

(a) Property

(b) Be transferred to a corporation

(c) Solely in exchange for stock or securities in such corporation, and that

(d) The transferors immediately after the exchange be in control of the corporation, through ownership of 80 percent of all voting stock and at least 80 percent of all other classes of stock of the corporation.

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[9] Section 112 of the Revenue Act of 1936, 49 Stat. 1678, in part reads as follows:

"(b) (3) Stock for Stock on Reorganization.—No gain or loss shall be recognised if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. * * *

"(b) (5) Transfer to Corporation Controlled by Transferor.—No gain or loss shall be recognised if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange. * * *

"(g) Definition of Reorganization—As used in this section and section 113—

"(1) The term 'reorganization' means * * * (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred. * * *

"(2) The term 'a party to a reorganization' includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

"(h) Definition of Control.—As used in this section the term 'control' means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation."

Under § 112 (b) (5), a reorganization is not an essential element.[10]

Both Industrial and the Colorado Company, as guarantor, had defaulted in the payment of the interest and principal of Industrial's bonds. The defaults had not been cured, and neither Industrial nor the Colorado Company was able to cure them. There was no equity in the properties over and above the bonded debts secured by Industrial's mortgage and the Colorado Company's mortgage. The holders of Industrial's bonds were entitled to a satisfaction of their indebtedness from the mortgaged property, or a statutory substitute therefor under § 77B. They had acquired equitable rights in the property and were entitled to have it disposed of under a plan, fair and equitable to them. On the approval of the petitions under § 77B, the property of Industrial and the Colorado Company came under the jurisdiction of the bankruptcy court and private rights in respect to the res became subject to the superior dominion of the court and were to be adjudicated pursuant to the standards prescribed in § 77B.[11] Since no equity remained in the properties for the preferred and common stockholders, the properties passed under the jurisdiction of the court empowered to make fair and equitable disposition thereof for the benefit of the bondholders. In the exercise of that jurisdiction the bankruptcy court ordered the equitable rights and interests of the bondholders in the properties to be transferred to the Colorado Corporation in exchange for stock and bonds of that corporation. Pursuant to the order, all of the assets of Industrial and the Colorado Company were transferred to the Colorado Corporation. In substance, Industrial's bondholders were the transferors.

Furthermore, the bonds of Industrial were property in the hands of the holders thereof[12] and they were transferred to the Colorado Corporation in exchange for all of the voting stock thereof, and under the plan no additional stock was to be presently issued. The warrants gave no rights to the holders thereof to vote or otherwise exercise the rights of stockholders.

Hence, property was transferred to the Colorado Corporation solely in exchange for stock and securities of such corporation and immediately after the transfer the bondholders, the transferors, were in control of the Colorado Corporation, owning all of its

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[10] Portland Oil Company v. Commissioner, 1 Cir., 109 F. 2d 479, 489; Hartford-Empire Company v. Commissioner, 43 B. T. A. No. 20; Leckie v. Commissioner, 37 B. T. A. 252, 257; Handbird Holding Corporation v. Commissioner, 32 B. T. A. 238, 247.

[11] Case v. Los Angeles Lumber Company, 308 U. S. 106, 125.

[12] Leckie v. Commissioner, 37 B. T. A. 252, 257; Rockford Brick & Tile Co. v. Commissioner, 31 B. T. A. 537; Miller and Paine v. Commissioner, 42 B. T. A. No. 89; Portland Oil Company v. Commissioner, 1 Cir., 109 F. 2d. 479, 488; P. A. Birren & Son v. Commissioner, 7 Cir., 116 F. 2d 718, 719. See, also, Commissioner v. New Haven & S. L. R. R. Co., 2 Cir., — F. 2d — (decided July 16, 1941); Id., —, B. T. A. —, Prentice-Hall, 1941, Vol. 4, Par. 64,318.

stock, and no gain or loss should be recognized by reason of the provisions of § 112 (b) (5).

Moreover, we think, as the Board held, there was a reorganization within the meaning of § 112 (g) (1) and, hence, under § 112 (b) (3) no gain or loss should be recognized.

The elements required by § 112 (g) (1) (C) are: (1) that there be a transfer by a corporation of all or a part of its assets to another corporation, and (2) that immediately after the transfer the transferor or its stockholders, or both, be in control of the corporation to which the assets were transferred.

The assets of both Industrial and the Colorado Company were transferred to the Colorado Corporation. Immediately after the transfer, the bondholders of Industrial were in control of Colorado Corporation, since all the capital stock of the latter to be presently issued was delivered to them in exchange for Industrial's bonds. The court order of June 20, 1936, directed the transfer of the assets and the issuance of the securities of the Colorado Corporation, and stated that the provisions thereof should constitute "a single and entire order and direction."

Substantially all the assets of Industrial which were subject to the lien of the mortgage securing Industrial's bonds had been transferred to the Colorado Corporation and the latter had unconditionally guaranteed the principal and interest of the bonds. Industrial and the Colorado Company had been in default as to the interest on the bonds since 1933 and as to the principal thereof since 1934, and were unable to cure the defaults. No equity remained in the property for the preferred or common stockholders. Industrial bondholders were entitled to have the property subjected to the payment of their bonds or to an equitable substitute therefor under the provisions of § 77B. The bondholders had an equitable right in the property and the stockholders had lost their equity therein. From a realistic point of view, the bondholders had supplanted the stockholders and were equitably entitled to have the property of Industrial and the Colorado Company disposed of for their benefit. We think, therefore, that the bondholders may be regarded as stockholders of Industrial and the Colorado Company. Such was the holding in Commissioner v. Kitselman, 7 Cir., 89 F. 2d 458, c. d. 302 U. S. 709.[13]

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[13] The rationale of the Kitselman Case has been followed in the following decisions:
Commissioner v. Newberry L. & C. Co., 6 Cir., 94 F. 2d 447, 449;
Commissioner v. Southwest Consolidated Corporation, 5 Cir., 119 F. 2d 561, 563;
Commissioner v. Alabama Asphaltic Limestone Co., 5 Cir., — F. 2d — (decided May 5, 1941);
Rex Mfg. Co. v. Commissioner, 7 Cir., 102 F. 2d 325, 329;
Leckie v. Commissioner, 37 B. T. A. 252, 256;
Greenwood v. Commissioner, 41 B. T. A. 664, 668;
Howard Hotel Corporation v. Commissioner, 39 B. T. A. 1147, 1153;
Commissioner v. New Haven & S. L. R. R. Co., 2 Cir., — F. 2d — (decided July 16, 1941).
LeTulle v. Scofield, 308 U. S. 415, and Helvering v. Tyng, 308 U. S. 527, are clearly distinguishable. In the former, LeTulle was the sole stockholder in the Gulf Coast Irrigation Company. All of its properties were transferred to the Gulf Coast Water

Furthermore, for the reasons heretofore indicated, the Industrial bondholders, in reality, were the transferors of the properties transferred to the Colorado Corporation.

In either event, regarding them either as stockholders or transferors, immediately after the transfer they were in control of the Colorado Corporation, to which the assets had been transferred, owning all of the presently issued stock of the Colorado Corporation and entitled to exercise all of the voting rights of the stockholders of the Colorado Corporation.

We accordingly conclude the decision of the Board of Tax Appeals was right and it is *Affirmed*.

No. 2270—Commissioner v. Cement Investors, Inc.

HUXMAN, Circuit Judge, Concurring Specially.

It is my conclusion that the transaction falls within Sec. 112 (b) (5) and is therefore exempt. The bondholders did transfer property to the new corporation in exchange for its securities and they were in charge of the new corporation immediately after the exchange. Sec. 112 (b) (5) therefore exempts them from the duty of reporting the transaction for income tax purposes at this time.

I cannot agree with the conclusion of the majority that the transaction is covered by Sec. 112 (g) (1), Sec. 112 (b) (3), and Sec. 112 (g) (1) (C). In my view, neither the insolvency of the corporation, the depreciation of its assets to the point where they are insufficient to pay its obligations, nor even the fact that there is nothing left for the stockholders, results in a metamorphosis which changes a bondholder into a stockholder. Neither can I agree with the reasoning in Commissioner v. Kitselman. If it ever was the law, in my opinion it was overruled by the rationale of LeTulle v. Scofield, 308 U. S. 415.

Judgment

Forty-eighth Day, April Term, Thursday, July 24th, A. D. 1941

Before Honorable ORIE L. PHILLIPS, Circuit Judge, and Honorable J. FOSTER SYMES, District Judge

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals and was argued by counsel.

Company. LeTulle received cash and bonds, but no stock in the Water Company. Hence, he became a mere creditor of the Water Company and retained no stake in the enterprise. See Commissioner v. Southwest Consolidated Corporation, 5 Cir., 119 F. 2d 561, 563, and Commissioner v. New Haven & S. L. R. R. Co., supra.

In the Tyng Case, the owners of stock in one corporation transferred their stock to another corporation in exchange for cash and gold debenture and gold debenture bonds. Here again, stockholders of the old corporation became creditors of the new corporation and retained no stake in the enterprise. For the facts in the Tyng Case, see Commissioner v. Tyng, 2 Cir., 109 F. 2d 55.

On consideration whereof, it is now here ordered and adjudged by this court that the decision of the said United States Board of Tax Appeals be and the same is hereby affirmed.

An August 30, 1941, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States Board of Tax Appeals.

Clerk's Certificate

United States Circuit Court of Appeals, Tenth Circuit:

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains a full, true and complete copy of the transcript of the record from the United States Board of Tax Appeals, and full, true and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 2270, wherein Commissioner of Internal Revenue was petitioner and Cement Investors, Inc., was respondent, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 9th day of September, A. D. 1941.

[SEAL] ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.
By: GEORGE A. PEASE,
Deputy Clerk.

Supreme Court of the United States

No. 644—, October Term, 1941

Order allowing certiorari

March 9, 1942

On petition for writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the said petition be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1942